OCSE-PIQ-90-01

Date: 2-8-90

From: Robert C. Harris
Associate Deputy Director

Subject: FFP in Costs of Judicial Personnel

To: OCSE Regional Representative
Region VI

This is in response to your December 14 request for an interpretation of the policy regarding the availability of Federal financial participation (FFP) in the costs of administrative and support staffs of judges under 45 CFR 304.21 (b)(5). Specifically, you described situation where the Office of the Texas Attorney General has an agreement with the Texas State Board of Regional Judges (the Board) which provides reimbursement for the Board's expenses in overseeing the Texas title IV-D expedited processes system. The Board is acting in a strictly administrative capacity and performs no judicial or fact-finding function. Your questions and our responses are as follows.

1. Question: Are any of the costs of these contracts, particularly the costs of "administrative assistants," eligible for FFP?

Response: Original Federal policy under title IV-D provided FFP only in the costs of compensation of certain court employees performing IV-D functions. FFP in administrative costs in support of these individuals and all other ordinary administrative costs of the judiciary system was prohibited under early policy.

On July 31, 1978, regulations at 45 CFR 304.21 were amended (43 FR 33249) to specify that FFP was prohibited in "any costs incurred by a court in making judicial determinations," including both personnel and administrative costs associated with the judicial determination process. However, FFP continued to be available in the costs of compensation of non-judicial staff and in certain related administrative costs, such as office space, furnishings, supplies, computers, etc., incurred in providing child support enforcement services under the IV-D program. Therefore, OCSE has historically distinguished the costs of making judicial determinations from the costs of performing other child support functions such as collection and enforcement under cooperative agreements with courts. It has been our position that funding the costs of judicial decision-making could raise questions regarding the impartiality of the judicial process.

The Social Security Disability Amendments of 1980 (P.L. 96-265)

amended section 455 of the Act by adding a new paragraph (c) to make Federal funding available for the expenditures of the support personnel of judges and other individuals who make judicial determinations in child support enforcement cases as well the administrative costs incurred on behalf of those support personnel in excess of such costs during calendar year 1978. As set forth in the preamble to the implementing regulations published on November 24, 1982, (47 FR 53014), judicial support staff includes bailiffs, stenographers, court recorders and clerks. Administrative costs include such items as office space, furnishings and supplies. The court costs which remained ineligible for FFP under these regulations were the judicial decision-maker's salary and benefits and the personal supplies, furniture, equipment, office space, travel and training related to the decision-making process.

Subsequently, the Tax Equity and Fiscal Responsibility Act of 1982 (P.L. 97-248) repealed section 455 (c) of the Act, effective October 1, 1983. Implementing regulations published December 23, 1982, (47 FR 57282) set forth the new 304.21 (b)(5) which stated that FFP is not available in compensation (salary and benefits), travel and training, and office-related costs incurred by administrative and support staffs of judges and other officials who make judicial decisions. This requirement is essentially the same today except that the phrase "and other officials who make judicial decisions" was deleted in response to comments received on the regulations implementing the a Child Support Enforcement Amendments of 1984 (50 FR 19628, May 9, 1985) to allow for FFP in the costs of the decision-makers operating within a state's expedited processes system.

Given this history, we believe that the intent of 304.21(b) (5) is to prohibit FFP in the costs of support personnel of judges who make judicial determinations in child support enforcement cases as well as the administrative costs incurred on behalf of those support personnel. With regard to the situation in Texas you presented, because the Board is acting in a strictly administrative capacity and performs no judicial function, the costs claimed for administrative assistants (i.e., salary and fringe benefits, travel and training, and office-related costs) are eligible for FFP.

2. Question: What is the definition of a "judge" and "administrative and support staff of judges" for Purposes of 304.21(b)?

Response: For purposes of 45 CFR 304.21(b), the term "Judge" refers to the role of a judicial decision-maker other than a court master, referee, or other similar individual operating under an expedited processes system. In addition, the phrase

"administrative and support staff of judges" as used in 45 CFR 304.21(b) (5) refers to such staff in the role of supporting the

judge in the judicial decision-making process.

3. Question: Do each of Texas' contracts constitute a "cooperative agreement" of a "purchase-service" contract?

Response: Because the above-mentioned agreements are between the office of the Texas Attorney General and the Texas State Board of Regional Judges which is directed by the Chief Justice of the State Supreme Court, we believe they fit the definition of cooperative agreements as set forth in 45 CFR 302.34 (i.e., a written agreement with appropriate courts...). Please note that regulations at 303.107 require that all cooperative agreements entered into on or after October 1, 1989 must contain the provisions of 303.107 (see 54 FR 30223, published July 19, 1989). Because Texas: contracts were entered into prior to October 1, 1989, they must meet the requirements for cooperative arrangements at 303.107 no later than October 1, 1990.

cc: Mike Sturman
OFM

OCSE-PIQ-90-02

Date: March 1, 1990

From: Associate Administrator
Office of Financial Management

Subject: "Abandoned" Child Support Collections

TO: Alvin Tucker
Acting OCSE Regional Representative
Region III

This is in response to the memoranda from your office dated September 29 and October 31 concerning similar situations involving child support collections under title IV-D. In the first instance, collections received by the State proved to be undistributable; in the second instance, collections, although properly distributed, remained uncashed by the intended recipient.

Federal regulations governing title IV-D do not specifically address the treatment of child support collections in these situations. However, under Departmental regulations concerning grant-related income these amounts are recognized as "program income" and, therefore, are reportable as a reduction of program expenditures:

- 45 CFR 74.41(a) defines "program income" as gross income earned...from activities part or all of the cost of which is...borne...by a grant...."

- 45 CFR 304.50(b) requires the reporting of "...income earned during the quarter resulting from services provided under the IV-D State Plan."

Every State has statutes and regulations governing the handling of unclaimed or abandoned property left in its care. OCSE-PIQ-88-7, dated July 11, 1988, recognizes this fact and encourages each State to utilize these individual State procedures to report undistributable or uncashed title IV-D collections as title IV-D program income.

Undistributable Collections

In your memorandum of September 29, you proposed to disallow a total of $421,920 in Federal financial participation (FFP) against the State of Maryland for its failure to properly report program income which resulted from an accumulation, over a period of time, of undistributable child support collections.

Undistributable collections result when the State IV-D agency receives a child support payment and is unable to identify and locate either the obligor (the absent parent) or the obligee (the custodial parent). Of course, the State has the responsibility to assure that these amounts are, in fact, collections under title IV-D and to make a diligent effort to distribute these collections further. However, until such identifications are made, the State may be unable to assign these amounts to specific cases or to even categorize them as having been received on behalf of AFDC or non-AFDC families.

In your memorandum, you propose to disallow undistributable title IV-D collections as unreported program income at the point in time when the State, under State statute, remits these funds to the Maryland Abandoned Property Division. However, in his opinion, the Chief Counsel, Region III, notes that under Maryland statute, abandoned property is not considered to be the "property of the State" and remains subject to the claims of individuals. It is his counsel, therefore, that to classify these funds as program income at that point would be premature and that such action should only follow the actual distribution of funds for use by the State.

In regard to the Regional Counsel's objections, it appears that the State statute fails to indicate that abandoned property is ever considered to be the property of the State. Therefore, it is reasonable to designate the point at which the funds are considered "abandoned" as the point at which their identity should be construed as program income. Such an administrative decision is further supported by the fact that the conversion of undistributable collections to program income is a reversible transaction should a claim against these funds be presented to the State in the future.

Accordingly, I concur with your proposed disallowance. Collections determined to be undistributable should be reclassified and reported as program income when the State, in accordance with State law, defines these funds to have been abandoned. This action would be consistent both with the "prompt distribution" requirements of the Family Support Act and the policy stated in PIQ-88-7 of incorporating the provisions of State law in such instances.

Distributed but Uncashed Collections

In your memorandum of October 31, you questioned whether the State of Delaware can be required "to report distributed non-AFDC collections as program income after they have been escheated."

This is similar to the situation discussed above since collections received by the State were not effectively transferred to the intended recipient. Here, however, the

collections were identifiable and were, in fact, properly distributed to non-AFDC families, but the checks were never presented for payment by those families. Under State law, checks remaining uncashed for a period of five years are transferred to the State's General Fund.

Since these amounts have been identified as non-AFDC collections, presumably the identity and location of the obligor are known to the State. If so, if provided under State law, the State's primary responsibility in this situation may be to return the amount collected to the obligor at the conclusion of the State-mandated five-year waiting period. If a return of these funds is either not required or is impossible, these amounts would properly be considered to be "abandoned" and reclassified as title IV-D program income at the point in time that the State transfers the funds to the General Fund. At that point, these collections would be treated in the same manner as the undistributable collections discussed above.

Therefore, in response to your question, I find that Federal regulations pertaining to program income, the OCSE policy stated in PIQ-88-7, and the requirements of the Family Support Act provide proper authority to require States to report distributed but uncashed child support collections as program income.

Financial Reporting

Due to the unusual nature of these transactions, a brief discussion of the required financial reporting is in order.

1. All collections should have initially been reported on the appropriate "receipt" line (lines 2 through 8) of Form OCSE-34. Collections identified as being Non-AFDC should have also been included on line 11 as "Collections Distributed as Payments to Families." Other amounts should have also been included on line 14 as "Collections Remaining Undistributed."

2. Once considered abandoned under State law, the amount of the collection must be removed from the collection report by reversing the procedures described in step 1. A negative amount should be reported on line 8, "Adjustments to Previously Reported Collections" and the amounts reported on either line 11 or 14 must be reduced by the appropriate amount.

3. The "abandoned" collections must be reported as "Program Income," on line 3 of Form OCSE-131 (Part 1) for the same fiscal quarter as the collection adjustment discussed above.

4. If, at some date in the future, a legitimate claim is honored against funds previously considered "abandoned," this transaction can be reversed by reporting a decreasing prior quarter adjustment of program income on Form OCSE-131

and, unless the collection is being returned to the obligor, an equal increasing adjustment of child support collections on Form OCSE-34, including a reporting of the distribution of this collection.

Michael L. Sturman

cc: OCSE Regional Representatives
Regions I, II, IV - X
February 28, 1990

OCSE-PIQ-90-03

Allie Page Matthews
Deputy Director

State Legislation to Implement the Family Support Act of 1988 (P.L. 100-485)

OCSE Regional Representatives
Region I - X

As a follow-up to the conference call of January 29, 1990, we are responding in writing to the following questions addressed in the conference call:

Question 1: May State law governing mandatory genetic testing specify blood testing, rather than genetic testing?

Response: Yes, the State law, regulations, and/or procedures having the full force and effect of law may specify blood testing, rather than genetic testing.

Although the Federal statute at section 466(a)(5) of the Social Security Act (the Act) specifies "genetic" testing and there may be limited instances (e.g., the absent parent is dead, a hemophiliac, or objects to blood drawing for religious reasons) in which drawing blood may be challenged or impossible, we believe use of the term blood testing warrants State plan approval. Blood is the substance of choice for genetic testing. In the rare instances that objections are raised or blood testing is impossible, other tissues may be ordered to be tested.

Question 2: Must State law, regulations, and/or procedures which have the full force and effect of law specify that the guidelines will be reviewed at least once every four years?
Response: The State law, regulations, and/or procedures which have the full force and effect of law may specify that the guidelines will be reviewed at least once every four years. Because mandatory guidelines requirements are under section 467, rather than section 466, of the Act, it is not explicitly required that all guidelines provisions (other than the guidelines and rebuttable presumption requirements) must be in the State law, rules, or procedures. However, while you should urge States to include the four-year review requirement in State law, rules, or procedures, in the absence of specific law, rules or procedures, the State may submit written documentation that the guidelines will be reviewed at least once every four years. This documentation must be from the entity within the State that enacted or developed the guidelines or arranged for their development (i.e., appointed a commission to develop guidelines which were later adopted as law or court rule). Submittal of the State plan amendment without documentation that the reviews will occur is inadequate. In the absence of State law, regulations,

and/or procedures, the State must provide some documentation that ensures guidelines will be reviewed at least once every four years.

Question 3: Must State law, regulations, and/or procedures that have the full force and effect of law specify the criteria established by the State for rebuttal of the guidelines' amount?

Response: Yes, the State must specify in law, regulations, and/or procedures that have the full force and effect of law the criteria established by the State that must be used to rebut the guidelines' amount. However, the criteria in the State law, regulations, and/or procedures may be very general (e.g., that the guidelines may be rebutted due to unusual hardship circumstances, such as complex medical problems or disability).

OCSE-PIQ-90-04

March 2, 1990

Allie Page Matthews
Deputy Director

Case Closure Criteria for Medicaid-Only and Foster Care Cases

Guadalupe Salinas
Regional Representative
Region VIII

This is in response to your memorandum of December 27, 1989, asking under what conditions former Medicaid-only and IV-E foster care cases may be closed. You also asked if there are case closure criteria for former IV-E foster care recipients who do not return to an AFDC household and have no IV-E arrearages.

The final regulations for standards for program operations, published in the Federal Register August 4, 1989 (54 FR 32284), established case closure criteria under §303.11. The final regulations implementing section 9142 of the Omnibus Budget Reconciliation Act (OBRA) of 1987, which are expected to be published within the next six months, will revise §303.11 to address case closure criteria for former Medicaid-only cases.

With respect to former IV-E foster care cases, when IV-E services cease to be provided, generally the child is returned to an AFDC family (and is eligible to receive IV-D services as a part of that family) or has attained majority or been adopted (and there is no longer a current support order). However, §302.52(c) provides that "When a State ceases making foster care maintenance payments under the State's title IV-E State plan, the assignment of support rights under section 471(a)(17) of the Act terminates except for the amount of any unpaid support that has accrued under the assignment. The IV-D agency shall attempt to collect such unpaid support." Therefore, States are required under this section to attempt to collect unpaid support after title IV-E foster care eligibility ends. The cases are considered title IV-E arrearage-only cases.

There is no specific case closure criterion which would allow States to close those cases where the former IV-E foster care recipient does not return to an AFDC household and has no IV-E arrearages simply because the case ceases to be eligible for IV-E services. In the situation described, when the IV-E agency notifies the IV-D agency that the IV-E case is being closed, the IV-D agency should notify the former IV-E recipient's custodial parent that he or she may apply for IV-D services. If the custodial parent does not apply for IV-D services, the IV-D agency may close the case under the case closure criteria §303.11(b)(12), since an application for services would be "essential for the next

step in providing IV-D services."

If you have any additional questions, contact Andrew J. Hagan, (202) 252-5375.

cc: OCSE Regional Representatives
Regions I-VII, IX, and X

OCSE-PIQ-90-05

Date: March 28,1990

From: Allie Page Matthews
Deputy Director

Subject: Policy Interpretation Questions - Request for policy clarification with respect to interstate cases

To: OCSE Regional Representatives
Regions I - X

This is in response to questions from a number of Regional Offices on processing interstate cases. In particular, we are responding to questions concerning location requests, central registries, interstate forms, and payment of costs in interstate cases. Please ensure that these policy statements are articulated to the States in your region.

Location

1. Question: May a State send a request for location services directly to another State's State parent locator services (PLS), by-passing that State's central registry?

Response: In the preamble to the final program standards regulation (see 54 FR 32298, August 4, 1989), we indicated that, in cases in which a State has information that the absent parent may be in one of several States, the State may ask several States to attempt to locate an absent parent or putative father. At State option, these requests may be made directly to the other State's PLS under certain conditions.

If a State sends a locate request directly to another State's PLS, that request must be made (and responses received) as part of, and within the required timeframe for, the requesting State's location activities (i.e., within 75 calendar days of determining that location is necessary, as required in 303.3(b)(3), effective October 1, 1990). The requesting State is responsible for case processing timeframes in these instances because the case is not being transmitted officially as an interstate case. Those who urged us to allow this locate-only process assured us that, based on experience, the requests are handled quickly because States generally access on-line automated sources in, or exchange magnetic tapes with, other States. Therefore, since these requests are not formal interstate case transmittals, the requirements in §303.7 do not apply.

2. Question: If a State receives an interstate transmittal form on which location is the only requested action, may that State by-pass its central registry and transmit the request

directly to its State PLS?

Response: No. Once an initiating State has prepared and forwarded an interstate transmittal form to a responding State's central registry, the responding State must handled the case in accordance with the requirements in §303.7 and may not redirect the case or by-pass the central registry process. If the initiating State requests location services on its transmittal form, the responding State's central registry must meet its responsibilities under §303.7(a)(2), including forwarding the case for location services.

3. Question: May the responding State send completed location responses to the initiating State's central registry or must such responses be sent directly to the locality indicated on the interstate form.

Response: The responding State must send responses to the agency in the initiating State which is indicated on the interstate transmittal form. It may not send all responses to the central registry in the initiating State. As stated in the preamble to the final rule entitled, "Provision of Services in Interstate IV-D Cases," published in the Federal Register on February 22, 1988, (53 FR 5251), once an interstate case is forwarded for action, the initiating State or local IV-D agency and the responding State or local IV-D agency processing the case should communicate directly regarding additional information and case actions. Such direct contact is essential and ongoing contacts should not flow through the central registry. In any case, interstate cases are never required to flow through the initiating State's central registry. Therefore, any information on case activity, including location information, must be communicated by the agency in the responding State which is processing the case (including the State PLS) to the agency in the initiating State specified on the interstate transmittal form.

Central Registries

1. Question: What constitutes a "response" in terms of the requirements of §303.7(a)(4), under which central registries must respond to inquiries from other States within 5 working days of receipt to the request for a case status review?

Response: The central registry must obtain sufficient information on the case to provide a substantive case status response. It may not simply acknowledge receipt of the request and forward the request to the locality actually working the case for response. The preamble to the final interstate regulations (53 FR 5251) states that "a central registry must review the status of a case upon request of an initiating State, and respond to inquiries from other States about where a case was sent for action or whether action is being taken on a case, and respond within 5 working days of the request."

2. Question: If the central registry is required to provide a substantive response to a request for case status update, will this require contacting the local jurisdiction for case status information or must the central registry maintain up-to-date information on the status of their cases?

Response: Since the central registry is required to maintain only minimal data on a case, any request for case status information will usually require contacting the jurisdiction working the case unless the central registry has up-to-date information on the status of the case in its files.

As indicated in the preamble to the final interstate regulations (53 FR 5257), the requirement for central registries to respond to inquiries from other States is intended for situations in which an initiating State loses track of a case or is unable to determine whether any action is being taken on a case. Inquiries to the central registry should be limited to instances where direct contact between the initiating State and the responding State agency or court working the case is ineffective or impossible.

Further, effective with publication of the program standards regulations, initiating States are no longer required under §303.7(b)(6) to contact the responding State IV-D agency for a status update on cases not in payment status if 90 days has elapsed since the last contact with the responding State IV-D agency. The preamble to the final interstate regulations indicated at 53 FR 5247 that the requirement in §303.7(b)(6) will expire on June 1, 1990 or upon publication of final regulations on standards for program operations, whichever is earlier. Therefore, there should be fewer requests for case status update.

Interstate forms

1. Question: May a responding State require that the initiating State submit individualized State-specific forms in addition to the mandatory interstate forms required in §303.7 (the Interstate Child Support Enforcement Transmittal form or the URESA Action Request Forms package)?

Response: No, States may not request or require additional forms which substantially duplicate or duplicate in part the content or purpose of the mandatory interstate forms. The mandatory interstate forms and attachments are intended to replace individual State-specific forms and contain all necessary information a responding State would need to initiate action on a case. To allow responding States to request or require their own State forms in addition to mandatory Federal forms, negates the impact of requiring use of the standardized forms and is contrary to Federal requirements at §303.7.
Responding States may not use §303.7(c)(4)(ii) to justify requiring initiating States to complete additional forms containing some or all of the information contained in the

mandatory Federal forms. Section 303.7(c)(4)(ii) requires responding States to notify the IV-D agency in the initiating State of the necessary additions or corrections to the forms or documentation submitted by the initiating State. Requests for additional information under this section are limited to materials and information which are not contained in the Interstate Child Support Enforcement Transmittal Form or the URESA Action Request Forms package. The responding State may not, therefore, ask the initiating State to fill out State forms which duplicate material already provided in the Interstate Child Support Enforcement transmittal Form or the URESA Action Request Forms package.

2. Question: May the initiating State refuse a request for such additional, duplicative forms?

Response: Yes.

Responsibility for payment of costs in interstate cases

Question: Which State must pay the travel expenses of the custodial parent in a paternity establishment case where the responding State insists upon his or her presence at trial?

Response: Under §303.7(d), the IV-D agency in the responding State must pay all costs, other than blood testing costs, it incurs in processing interstate IV-D cases. This includes the costs of travel, food and lodging of the custodial parent in a paternity establishment case. The initiating State, in accordance with §303.7(d)(2), must pay only for the costs of blood testing in actions to establish paternity in interstate IV-D cases.

OCSE-PIQ-90-06

Date: May 3, 1990
From: Allie Page Matthews
Deputy Director

Subject: FFP in the Costs of Judicial Travel

To: Norma L. Goldberg
OCSE Regional Representative
Region VI

This is in response to your memorandum of April 5 regarding the availability of Federal financial participation (FFP) for a judge's travel expenses to attend a IV-D related conference.

Your questions and our responses are as follows:

Question 1: If FFP is allowable for travel and training costs of the judge to attend the URESA conference, does it matter whether the judge conducts training for additional judges in his jurisdiction or whether the training is only for the benefit of the individual judge?

Response: OCSE PIQ 79-13 dated May 1, 1979, states that: "... 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." In addition, the final regulations regarding the availability of FFP in the costs of Cooperative Agreements with Courts and Law Enforcement Officials published in the Federal Register on November 24, 1982 (47 FR 53014), in the response to comment number one, states that "... the costs of judges' travel or training not associated with the judicial determination process, such as the costs of attending a IV-D related training conference, will continue to be eligible for FFP as they have in the past." Therefore, FFP is available for a judge who handles IV-D cases to attend the Eastern Interstate Uniform Reciprocal Enforcement of Support Act (URESA) Conference, if such costs are incurred under a cooperative agreement that meets the requirements in 45 CFR 302.34.

A judge who attends the URESA Conference is not required to conduct training for other judges, however, we encourage the judge to do so because it would be beneficial to other judges who do not understand the URESA process.

Question 2: Would the URESA training raise questions regarding whether we were attempting to influence the impartiality of the judicial process by trying to educate the judiciary on the URESA system?
Response: No, the URESA training is intended to increase the knowledge of judges and other attendees regarding the URESA process. Each judge is likely to obtain a better understanding

of the use of the URESA process in IV-D cases.
July 3, 1990

OCSE-PIQ-90-07

Allie Page Matthews
Deputy Director

Questions Regarding Periodic Modification

Suanne Brooks
Regional Representative
Region IV

This is in response to your memorandum of May 3, 1990, regarding the questions South Carolina has submitted regarding periodic review and modification requirements of the Family Support Act of 1988. Because final regulations regarding these provisions have not been issued, our responses must be considered provisional and may be superseded when the final regulations are published.

Your questions and our responses follow:

Question 1: Will statewide application of periodic review and modification be required in 1990? Can pilots be run in selected areas of the State?

Response: Each State must develop an implementation plan for review and modification of support orders by October 13, 1990. The State must initiate a review, in accordance with its plan, at the request of either party to an order or the IV-D agency. The implementation plan must provide for statewide availability of this review and modification process. As long as the State implements some form of periodic review and modification process on a State-wide basis, the State may opt to do a more expansive periodic review and modification process in selected geographic areas.

Question 2: Will representation of the absent parent for a downward modification be required? What will be the responsibility of the IV-D agency in downward modifications?

Response: The statute clearly requires the State to respond to requests from the absent parent for review and modification. The State's responsibility is to respond to a request for review of an order and adjust the order, if appropriate, in accordance with the guidelines. This would include ascertaining the appropriate income information, factoring this information into the support guidelines, and presenting the resulting calculation to the court or administrative authority for any appropriate modification of the support order. The State may delegate any of its functions under the IV-D plan to any other State or local agency, in accordance with §302.12(a)(3) as long as the IV-D agency has responsibility for

securing compliance with the requirements of the State plan by such agency.

Question 3: Will the State have flexibility in selecting the cases for review in 1990 (e.g., orders five years or older, as opposed to those three years old as required in 1993)?

Response: Yes, the State may establish its own criteria for selecting cases for review in 1990. However, in developing its own criteria, the State should be aware that orders in most AFDC IV-D cases that were established or reviewed and modified prior to October 13, 1990, should be reviewed between October 13, 1990, and October 13, 1993. This is in anticipation of the requirement that effective October 13, 1993, States must review, and modify if appropriate, orders being enforced under title IV-D not later than 36 months after establishment or the most recent review, unless the State determines, in accordance with Federal regulations, such a review is not in the best interests of the child and neither parent requests it. Therefore, States should target for review their existing backlog of AFDC cases between 1990 and 1993 and be prepared to modify other IV-D orders upon request.

Question 4: What level of income verification will be required (e.g., will information from the Employment Security Commission files be sufficient)?

Response: Absent Federal regulations, each State may set its own criteria regarding income verification.

Question 5: What are the notice to the custodial parents and absent parents requirements in 1990? The law only says that custodial parents and absent parents have a right to request a review and the notice requirements do not begin until 1993.

Response: States must meet the requirement in section 103(c) for notices regarding the review and modification process, beginning October 13, 1990, when States must implement review and modification procedures, pursuant to section 103(a).

Question 6: How far do States have to go if no information can be found on the absent parent's income? What will be considered reasonable effort to determine income of the absent parent in order to compute the guidelines?

Response: The State should take steps to ensure that commonly available income data sources (e.g., State Employment Security Agencies, tax agencies, etc.) are utilized to locate the absent parent's income, if the information is not available directly from the absent parent. If the State is still unsuccessful, the State should document in the record its efforts to ascertain the absent parent's income. (Also see response to question seven.)

Question 7: How far do States have to go if the absent parent cannot be located?

Response: The standards for program operations, published in the Federal Register on August 4, 1989, (54 FR 32284), effective October 1, 1990, set forth location requirements at 45 CFR 303.3. Section 303.3(b)(1) requires the State to "use appropriate location sources, such as the Federal PLS, interstate location networks, local officials and employees administering public assistance, general assistance, medical assistance, food stamps and social services (whether such individuals are employed by the State or a political subdivision), relatives and friends of the absent parent, current or past employers, the local telephone company, the U.S. Postal Service, financial references, unions, fraternal organizations, and police, parole, and probation records if appropriate, and State agencies and departments, as authorized by State law, including those departments which maintain records of public assistance, wages and employment, unemployment insurance, income taxation, driver's licenses, vehicle registration, and criminal records."

Section 303.3(b)(5) requires that the State, if unable to locate an individual, "repeat location attempts in cases in which previous attempts to locate absent parents or sources of income and/or assets have failed, but adequate identifying and other information exists to meet requirements for submittal for location, either quarterly or immediately upon receipt of new information which may aid in location, whichever occurs sooner." Additionally §303.3(b)(6) requires that the State submit cases which meet the criteria for submittal at least annually to the Federal Parent Locator Service.

Question 8: Which State is responsible for the modification in URESA cases - responding or initiating State? Will standardized URESA forms be generated?

Response: Any State with an order is responsible for the review, and modification, if appropriate, of the order, in accordance with its guidelines. The situation is complicated when more than one State has a support order. However, if States initiate wage withholding in interstate cases, there is no reason for the responding State to establish or register an order other than for enforcement purposes, in which case only the initiating State will have an order and be required to review and modify that order, if appropriate, in accordance with its guidelines. We will be addressing the issue of review and modification in interstate cases in the proposed regulations. Draft revisions of the URESA forms have been distributed to States for their comments.

Question 9: Will there be exceptions to the modification process, i.e., the absent parent is on Supplemental Security Income (fixed income category)?

Response: Modification is only required if a review determines that the amount of support is inconsistent with the amount of support determined in accordance with the guidelines. States will have to establish criteria to define when an inconsistency with the guidelines amount is sufficient to warrant modification of the order. However, even for situations in which the absent parent is on a fixed income, the State should periodically review whether the absent parent's ability to pay has changed.

cc: OCSE Regional Representatives
Regions I-III, V-X

OCSE-PIQ-90-08

July 3, 1990

Allie Page Matthews
Deputy Director

Case Closure Criteria -- Colorado's Additional Criteria

Guadalupe Salinas
Regional Representative
Region VIII

This is in response to your memorandum of May 18, 1990, in which you present three additional case closure criteria that Colorado wishes to include in its own State case closure criteria and two additional concerns raised in the regional IV-D Directors' meeting. The additional criteria and our responses are as follows:

Situation 1: Colorado's Foster Care case has closed and there are no arrears owed to the State, or the arrears are less than $500.00, and no application for CSE services has been received.

Response: As explained in OCSE-PIQ-90-04, dated March 2, 1990, "when the IV-E agency notifies the IV-D agency that the IV-E case is being closed, the IV-D agency should notify the former IV-E recipient's custodial parent that he or she may apply for IV-D services. If the custodial parent does not apply for IV-D services, the IV-D agency may close the case under case closure criteria §303.11(b)(12), since an application for services would be 'essential for the next step in providing IV-D services.'"

Situation 2: Colorado is the responding State and the initiating jurisdiction has requested that the interstate case be closed. Colorado would not send the 60 day advance notice of closure for these cases.

Response: The case may be closed only if one of the case closure criteria in §303.11 applies, even if the request for closure comes from the initiating state. In the situation described, if the initiating jurisdiction is requesting closure on behalf of the custodial parent in a non-AFDC case and there are no arrearages assigned to the State, the responding State should document the initiating State's request and may close the case, under §303.11(b)(9).

We are developing a PIQ responding to questions raised concerning interstate case transfers and closure which should resolve this and similar issues.

Situation 3: The AFDC case has been closed and all possible assigned arrearages less than $500.00 have been collected and the CSE unit is no longer providing services for the current monthly

support obligation.

Response: The case may be closed only if one of the case closure criteria in §303.11 apply. In the situation described, if the custodial parent in a former AFDC case requests termination of IV-D services and all assigned arrearages have been collected, the IV-D agency should document the request for termination of services by the custodial parent and may close the case, in accordance with §303.11(b)(9).

The concerns raised by the IV-D directors and our responses are as follows:

Concern 1: States should be allowed to close a case in which the child's father is alleged to be unknown. Under Federal criteria, a State may only close this case under §303.11(b)(5) after having made regular attempts using multiple sources to locate the absent parent over a three-year period. States objected to the case remaining open for three years even though no information is available to locate the absent parent because these cases will adversely affect the State's paternity establishment percentage while they remain open.

Response: The IV-D agency may not close cases referred for IV-D services merely because the child's father is alleged to be unknown. The State is required to keep such a case open for a period of three years, in the event that information on the father may be forthcoming.

Concern 2: States want to eliminate the requirement for a 60 day notice when the criterion in 45 CFR 303.11(b)(11) applies, under which the IV-D agency may close a non-AFDC case if the IV-D agency is unable to contact the custodial parent within a 30 calendar day period despite attempts by both phone and at least one registered letter. If the State could not contact the custodial parent during the 30 days, a 60-day notice would be futile.

Response: As explained in the preamble to the final regulation, published in the Federal Register on August 4, 1989 (54 FR 32284) in response to comments on page 32305, we are concerned that the case closure criteria "take into account periodic absences of custodial parents who may be unavailable due to vacations, business travel or family emergencies... The 60-day notice of case closure required by paragraph (c) will also allow those parents who want continuing services to avoid closure by contacting the IV-D agency."

cc: OCSE Regional Representatives
Regions I-VII, IX, and X

OCSE-PIQ-90-09

July 19, 1990

Allie Page Matthews
Deputy Director

Redirection of Child Support Collections in Lieu of Full URESA Case

Natalie deMaar
Regional Representative
Region X

This is in response to memorandum of April 13, 1990, asking for policy guidance regarding support distribution when the IV-D custodial parent moves from one State "A" to another State "B" and the absent parent lives in a third State "C." The States request clarification about whether a State may do a redirection of support collections as a simple administrative action, one that does not require a full URESA packet, and strictly limits the responsibilities of State "A" (the redirecting State) to receiving and forwarding the support payment from State "C" (the responding State) to State "B" (the new initiating State) until State "B" can file an interstate action form with State "C" within the program standards and interstate timeframes.

Your specific questions and our responses follow:

Question 1: Is "redirection" of payments an appropriate way to handle interstate cases where the custodial parent moves from one State to another and the obligated parent resides in a third State?

Response: Yes, redirection of payments by the redirecting State, State "A," is an appropriate way to handle interstate cases when the custodial parent moves from State "A" to the new initiating State, State "B," and the absent parent resides in a third State "C" (the responding State).

Question 2: What responsibilities would the redirecting State have under the interstate and program standards regulations and how would a redirect case be evaluated by the audit staff (45 CFR 305.32(e))?

Response: The redirecting State, State "A," must continue to provide all appropriate IV-D services and to meet the interstate and program standards requirements, as appropriate, until the new initiating State, State "B," has established the new interstate case with the responding State, State "C," and State "A" is notified it may close the case. In a regularly paying case, e.g., one involving wage withholding, no action by State "A" should be necessary, other than receipt and redirection of payments. Upon

receipt of notification by State "B" that it has established an interstate case with State "C," State "A" may close its case, indicating the reason in the case record. State "A" may not stop working a case until notified by State "B" that State "B" is working the case. The OCSE audit staff would determine whether appropriate IV-D services were provided. If the only necessary action was to redirect payments in paying cases, auditors would consider the State's actions in that case to be adequate and appropriate.

Question 3: May the initiating State use the Interstate Child Support Enforcement Transmittal to request redirection of payments (45 CFR 303.7(b)(3))?

Response: Yes, the new initiating State, State "B," may use the Interstate Child Support Enforcement Transmittal form to request redirection of payments by the redirecting State, State "A."

Question 4: Would the redirect cases be considered cases for reporting purposes and would the redirecting State be able to count collections for incentive purposes (45 CFR 303.52(b)(4)(ii))?

Response: Yes, these cases would be considered cases in the redirecting State, State "A," for both reporting and incentive purposes.

cc: OCSE Regional Representatives
Regions I-IX

OCSE-PIQ-90-10

August 21, 1990

Allie Page Matthews
Deputy Director

Use of Certified Letters in Lieu of Registered Letters for Case Closure under 45 CFR 303.11(b)(11)

Regional Representatives
Regions I-X

The attached letter to the California IV-D agency explains OCSE policy for allowing the use of certified letters in lieu of registered letters when seeking to close a IV-D case under the criteria at 45 CFR 303.11(b)(11). We will be revising the regulation when final regulations for implementation of sections 9141 and 9142 of the Omnibus Budget Reconciliation Act (P.L. 100-203) are published in the near future.

attachment

LETTER ATTACHED TO THE PIQ

Mr. Robert A. Horel
Deputy Director
Welfare Programs Division
Department of Social Services
744 P Street
Sacramento, California 95814

Dear Mr. Horel:

This letter is in response to your letter of July 10, 1990, requesting confirmation of policy information you received from our San Francisco Regional Office. Specifically, the Regional Office told you that States may meet the requirements of the case closure criteria, at 45 CFR 303.11(b)(11), by using "certified letters" rather than "registered letters," since the IV-D agency would still receive a receipt of delivery or the letter returned as not delivered. You were correctly provided with OCSE policy in this matter.

Additionally, you request that OCSE altogether delete the requirement for special (i.e., certified or registered) mail delivery and allow the sending of contact letters via regular mail. The requirement for use of special mail applies only when the IV-D agency is seeking to close a non-AFDC IV-D case under §303.11(b)(11). Contact letters via the regular mail are allowed for other situations. In the situation presented, we believe that the IV-D recipient is more likely to receive, give extra attention to, and promptly respond to a special mail delivery if continued services are desired. In addition, the receipt for delivery, or the letter returned as not delivered despite attempts by the U.S. Postal Service, will provide necessary documentation of the IV-D agency's efforts to contact the IV-D recipient. Accordingly, we do not plan to drop the required use of special mail before a case may be closed, under 45 CFR 303.11(b)(11).

You also request that OCSE not require restricted delivery, whereby only the addressee (i.e., the custodial parent) may sign for the special mail. Section 303.11(b)(11) does not require the use of restricted delivery.

Sincerely,

Allie Page Matthews
Deputy Director
Office of Child Support Enforcement

cc: Sharon Fujii
OCSE Regional Representative
Region IX

OCSE-PIQ-90-11
September 14, 1990

Allie Page Matthews

Deputy Director

Enforcing Child Support Orders for Obligors Receiving Supplemental Security Income (SSI) Benefits - Garnishment/Enforcement

Suanne Brooks
OCSE Regional Representative

This is in response to your memorandum of July 10 seeking clarification of OCSE's policy regarding requirements for enforcement of support orders when the obligor's only income is from SSI benefits.

1. Question: Is enforcement of child support appropriate in cases in which the absent parent's only income is derived from SSI benefits?

Response: Yes. The IV-D agency must attempt to enforce support orders in cases where the obligor's only income is from SSI benefits. Evidence of income from SSI would indicate support potential, notwithstanding the fact that such income is immune from garnishment.

Receipt by the absent parent of SSI benefits does not, in and of itself, constitute a criteria for case closure under 45 CFR 303.11. Although §303.11(a)(6) provides for closure when the absent parent cannot pay support for the duration of the child's minority because the parent has a "medically-verified total and permanent disability," it also requires that there be "no evidence of support potential." The U.S. Supreme Court has ruled in Rose v. Rose, 481 U.S. 619, 107 S.Ct. 2029, 1987, that although a veteran's disability benefit cannot be garnished at its source prior to payment, in accordance with sections 459 and 462 of the Act, the VA benefit can be considered by a court or administrative authority in calculating the absent parent's ability to pay child support and once the benefit payment has been disbursed by the VA, such monies are no longer subject to such protection. We believe that the same principle applies with respect to SSI payments. Therefore, income from SSI is subject to various collection procedures, including actions for contempt, and liens on the absent parent's bank account.

2. Question: If enforcement of such cases is appropriate, should child support agencies seek income withholding against SSI benefits?

Response: No. SSI payments are not subject to garnishment by a State or any other entity, for the enforcement of support.

However, the fact that SSI benefits cannot be garnished does not relieve the State from the responsibility of attempting to collect unpaid support.

3. Question: If use of income withholding against SSI is not appropriate, can States be assured that failure to take such action will not result in an audit exception?

Response: Yes. A IV-D agency cannot be held accountable under audit requirements for taking actions which are prohibited. However, as discussed above, the IV-D agency is required to enforce support orders in cases where the obligor's only income is from SSI benefits using enforcement tools other than garnishment/withholding.

cc: OCSE Regional Representatives
Regions I - III, V – X

OCSE-PIQ-90-12

October 10, 1990

Deputy Director
Office of Child Support Enforcement

Wage Withholding - Initial Orders Containing a Support Debt

Natalie deMaar
OCSE Regional Representative

This is in response to your memorandum of July 17, 1990 regarding two situations presented by the State of Washington which the State believes do not qualify for mandatory wage withholding. Washington is concerned that OCSE audit criteria for the upcoming corrective action audit would require that withholding be implemented in both situations despite the fact that the arrearages were created for a prior period at the time the initial order for current support was entered.

1. Question: Is mandatory wage withholding required in a case referred by the IV-A agency where the absent parent, after receiving an administrative notice and finding of financial responsibility from the IV-D agency, acknowledges his obligation to support and signs a consent order which establishes an obligation for current support and a support debt owed for the period from the date the AFDC grant began to the time the consent order is established? The support debt contained within the consent order is scheduled to be paid in installments agreeable to both the IV-D agency and the absent parent.

Response: Mandatory wage withholding based on arrearages under current Federal regulations is not required in cases where the arrearages, which would otherwise qualify the case for withholding, did not accrue under a support obligation. Regulations at 45 CFR 303.100(a)(4)(i) and (ii) require that withholding be implemented "on the date the absent parent fails to make payments in an amount equal to the support payable for one month" or "such earlier date that is in accordance with State law." Therefore, the absent parent has not "failed to make payments" under a support order and withholding based on arrearages would not be required. Similarly, regulations at 45 CFR 302.70(a)(8) require that "all support orders issued or modified in the State will include provision for withholding from wages in order to assure that withholding as a means of collecting child support is available if arrearages occur without the necessity of filing an application for" IV-D services (emphasis ours). This language clearly refers to arrearages occurring under a support order.

2. Question: In actions to establish paternity, because of the length of time involved in deciding the case, final paternity orders routinely contain judgments for back support. Is withholding required in these cases?

Response: No. As discussed above, although such orders may contain requirements to pay amounts for back support in addition to current support, if the debt did not accrue under a support order and does not reflect a failure to make payments under a support order, withholding based on arrearages is not required.

Since wage withholding is not required in these situations, the State would not be subject to an adverse audit finding.

Allie Page Matthews

OCSE-PIQ-90-13

October 15, 1990
Allie Page Matthews
Deputy Director

Illinois' Development of Supplemental Interstate Forms

Marion N. Steffy
OCSE Regional Representative
Region V

This is in response to your memorandum of July 9 regarding whether Illinois may require States to complete "Affidavit of Child Support Payments" and "Affidavit of Arrears" forms (forms that Illinois developed) in order to pursue interstate enforcement of existing Illinois orders for support. In subsequent conversations with your staff, you also requested clarification regarding whether forms which are part of the standard interstate forms package may be used for non-URESA requests, such as to accompany requests to initiate interstate wage withholding.

As stated in OCSE-PIQ-90-5, States may not request or require additional forms which substantially duplicate or duplicate in part the content or purpose of the mandatory interstate forms. Rather, the mandatory forms are intended to replace individual State-specific forms and contain all necessary information a State would need to initiate action on a case.

OCSE recently has revised the standard interstate forms and is asking States to begin using them no later than January 1, 1991. Until that time, States may use the original or revised versions of the forms.

States that are using the original forms must submit with each interstate case the Interstate Child Support Enforcement Transmittal or the URESA Action Request, as appropriate. States that are using the revised forms must submit the Child Support Enforcement Transmittal which is a combination of the original Transmittal and URESA Action Request. Regardless of which forms are used, States, as in the past, must continue to use other necessary standard interstate forms (e.g., General Testimony for URESA, Paternity Affidavit, etc.) to provide additional information regarding the case.

Both the original and revised versions of the General Testimony for URESA contain a section (Section V, entitled "Support Order and Payment Information") which can be used to record the payment history, including any noncustodial parents' arrearages. This section begins on page 4. Both versions of the General Testimony for URESA also require the person filling out the form to testify

under penalty of perjury, as required by the Illinois' "Affidavit of Child Support Payments". Furthermore, the General Testimony for URESA can be notarized or certified; therefore, an affidavit of payment history or arrears, such as that developed by Illinois, is unnecessary. Page 4a of the revised General Testimony for URESA contains a space for the form to be notarized.

Consequently, Illinois may not require States to complete State-specific forms such as Illinois' affidavit forms--they duplicate the content and purpose of the standard interstate forms.

Finally, the standardized forms, including the General Testimony for URESA, are intended to be used in initiating and processing requests for URESA as well as non-URESA remedies, as appropriate.

cc: OCSE Regional Representatives
Regions I-IV, VII-X

OCSE-PIQ-90-14

November 8, 1990

Allie Page Matthews
Deputy Director

Federal Funding for Cooperative Arrangements which Meet the Requirements of 45 CFR 303.107

Regional Representatives, OCSE
Regions I - X

In response to several recent conversations with Regional Offices and States, we are clarifying when cooperative arrangements between the IV-D agency and courts and law enforcement officials which meet the requirements of §303.107 must be signed to ensure Federal funding for costs incurred under such arrangements.

Final regulations which specify the six provisions that must be included in all cooperative arrangements in order to receive Federal funding were published in the Federal Register on July 19, 1989 (54 FR 30216). The regulations at 45 CFR 302.34(b) provide that the requirements contained in 45 CFR 303.107 were effective October 1, 1989, for new cooperative arrangements, and October 1, 1990, for cooperative arrangements existing prior to October 1, 1989.

Section 304.21(b)(6) provides that Federal funding is notavailable for the costs of cooperative arrangements that do not meet the requirements of 45 CFR 303.107. The regulations at 45 CFR 304.21(d) specify that Federal funding is available for costs incurred as of the first day of the calendar quarter in which a cooperative agreement or amendment is signed by parties sufficient to create a contractual arrangement under State law. Therefore, if all parties to an agreement whose signatures are sufficient to create a valid agreement under State law sign a cooperative arrangement at any time during the quarter beginning October 1, 1990, and the cooperative arrangement is effective sometime during that quarter, Federal funding would be available as of the first day of the quarter.

OCSE-PIQ-91-01

January 2, 1991

Allie Page Matthews
Deputy Director

Release of Child(ren)'s Social Security Number(s) for Medical Insurance Enrollment Purposes

Guadalupe Salinas
OCSE Regional Representative
Region VIII

This is in response to your memorandum of July 11, 1990, regarding the release of Social Security numbers (SSN's) of child(ren) to the absent parent or to the absent parent's medical insurance company in order to enroll the child(ren) in medical insurance.

Federal regulations, at 45 CFR 303.21(a), limit the use or disclosure of information concerning IV-D applicants and recipients to purposes directly (emphasis added) connected with the administration of the IV-D program, other specified titles of the Social Security Act (the Act), any investigations, prosecution or civil or criminal proceeding growing out of any such plan or program, and the administration of any other Federal or Federally assisted program which provides direct assistance, in cash or in kind, to individuals on the basis of need. Under this requirement, the IV-D agency cannot disclose the SSN's of child(ren) to the absent parent or the absent parent's insurance company because such disclosure would not be directly connected with the administration of any programs referenced by the regulation.

The Privacy Act of 1974 (P.L. 93-579) also limits the ability of State agencies to divulge SSN's. While under P.L. 93-579 there are no direct Federal prohibitions against redisclosure by a State of a SSN voluntarily disclosed by a member of the public, a State requesting disclosure must inform the individual whether the disclosure is mandatory or voluntary, the legal authority for the request, and what uses will be made of the SSN (See 5 USC 552a note (b)). A State may not redisclose a SSN if the use to which the SSN would be put was not disclosed at the time of the initial request. If South Dakota did not inform custodial parents of the possible redisclosure of the child(ren)'s SSN's, then redisclosure of SSN's is prohibited. It should also be noted that redisclosure of a SSN in violation of the laws of the United States is a felony punishable by a fine or imprisonment for not more than five years, or both (See 42 USC 408(h)).

The absent parent may be able to obtain the child(ren)'s SSN's directly from the Social Security Administration, which would honor the absent parent's request based on 5 USC 552a (h), which

allows parents acting on their child(ren)'s behalf to obtain access to government records about their child(ren). The term "record" is defined to include an identifying number, such as a SSN, assigned to an individual (See 5 USC 552a (a)(4)). Since the absent parent's request is being made to allow the absent parent to enroll the child(ren) in the absent parent's health insurance policy, the absent parent would be acting on the child(ren)'s "behalf."

In addition, the custodial parent may disclose the child(ren)'s SSN's directly to the absent parent or the absent parent's insurance company. Also, the IV-D agency, with the consent of the custodial parent, may disclose the child(ren)'s SSN's to the absent parent or the absent parent's insurance company. If, in cases in which there is an assignment of support rights to the State, the IV-D agency considers the failure of the custodial parent to disclose, or to consent to disclosure of, the child(ren)'s SSN's to be non-cooperation, the IV-D agency may refer the case to the AFDC or Medicaid agency for that agency to determine whether the custodial parent has good cause for failure to cooperate. Nonetheless, we believe that most custodial parents would willingly provide, or authorize the disclosure of, whatever information is necessary to enroll the child(ren) in the absent parent's health insurance policy.

OCSE-PIQ-91-02

January 24, 1991

Allie Page Matthews
Deputy Director

Case Closure Criteria under 45 CFR 303.11 and in Reporting Forms OCSE-156 and OCSE-158

Guadalupe Salinas
Regional Representative
Region VIII

This is in response to your memorandum of November 16, 1990, regarding North Dakota's questions on case closure criteria under 45 CFR 303.11 and the issue of different meanings for "case" in 45 CFR 303.11 than that used in the reporting forms OCSE-156 and OCSE-158.

As explained in the November 2, 1990 Action Transmittal (OCSE-AT-90-12), for the purposes of the OCSE Child Support Enforcement Program Quarterly Data Report (OCSE-156) and the Child Support Enforcement Program Annual Data Summary Report (OCSE-158), a IV-D case is defined as "an absent parent (mother, father, or putative father) who is now or eventually may be obligated under law for the support of a child or children. An absent parent is counted once for each family which has a dependent child he or she may be obligated to support." Under the clarifications provided in OCSE-AT-90-12, a case may be closed in one category and re-opened in another when the status of the case changes. For example, when the custodial parent and the child(ren) are terminated from AFDC, the IV-D agency would, for purposes of the OCSE-156 and OCSE-158, close the case in AFDC status and re-open the case in non-AFDC status and/or AFDC arrears only status. Likewise, when a recipient of IV-D services who had applied for IV-D services later applies for and receives AFDC, the IV-D agency would close the non-AFDC case and re-open the case as an AFDC case.

However, for the purposes of case closure, under 45 CFR 303.11, a case is based upon the child(ren) in a family unit, and cases may be closed only if they meet one of the specified criteria in 45 CFR 303.11(b). When a case changes status for the purposes of OCSE-156 and OCSE-158, the case would not be closed for purposes of 45 CFR 303.11 unless one of the case closure criteria under 45 CFR 303.11(b) was also met.

Your questions and our responses are as follows:

Question 1: How do you close an AFDC case that has been closed by IV-A and the former AFDC recipient doesn't want non-AFDC continued services and no arrears are owed?

Response: We agree with the Regional Office (RO) response that,

for purposes of case closure under 45 CFR 303.11, the case may be closed under 45 CFR 303.11(b)(9), as addressed in OCSE-PIQ-90-08.

Question 2: How do we close an AFDC case where the former AFDC recipient previously refused continued IV-D services upon termination of AFDC benefits but the IV-D case remained open because arrears were still owed the State? After all arrears are finally collected can this be closed under reason (b)(9)?

Response: We agree with the proposed RO response that, for purposes of case closure under 45 CFR 303.11, the case would be continued as an AFDC arrears-only case when the former AFDC recipient refuses continued IV-D services, and that when the arrears are all collected, the case could be closed, under 45 CFR 303.11(b)(9). Under 45 CFR 303.11(c), the State is not required to send the 60-day prior notice before closing a case to be closed under criterion (9). However, since it may have been many months since the former AFDC recipient had refused continued IV-D services, the State may wish to consider whether it would be in the best interests of the IV-D program and the child(ren) to send the 60-day prior notice even when such notice is not required under the Federal regulations.

For purposes of completing the Child Support Enforcement Program Quarterly Data Report (OCSE-156) and the Child Support Enforcement Program Annual Data Summary Report (OCSE-158), the case would undergo a status change from a IV-D AFDC case to an AFDC Arrears Only case when the family refuses continuation of IV-D services when AFDC benefits are terminated but AFDC arrears are still owed, and would be closed when the arrears are all collected.

Question 3: If the absent parent is unknown and there is no way to ever establish paternity can this case be closed under reason (b)(4)(ii) or do we have to wait three years and close under reason (b)(5)?

Response: We agree with the RO response that the case must remain open in locate status for the three years before the case may be closed under 45 CFR 303.11(b)(5), as addressed in OCSE-PIQ-90-08.

Question 4: What do you do with a case where the custodial parent refuses to cooperate and has been sanctioned? Reason (b)(12) covers the situation for non-AFDC cases, but what about AFDC cases?

Response: We agree with the proposed RO response that the case may only be closed if one of the closure criteria in 45 CFR 303.11 apply, and the reference to OCSE-PIQ-89-05, which clarified that the IV-D agency must continue to provide IV-D services as long as it is in the child's best interest.

Question 5: What do we do with an ineligible caretaker AFDC case when the mother of the child(ren) refuses to cooperate?

Response: We agree with the proposed RO response that the case may only be closed if one of the closure criteria in 45 CFR 303.11 apply.

Question 6: What do we do with an incoming interstate locate request when the absent parent cannot be located in the State? Do we have to wait three years before closing under (b)(5)?

Response: As explained in OCSE-PIQ-90-05, if the incoming request for location of an absent parent (or alleged father) is made directly to North Dakota's parent locator service (PLS), rather than through North Dakota's central registry, the request is not a formal interstate transmittal. The case would not be opened formally in North Dakota, and the requirements at 45 CFR 303.7 would not apply. In this type of request, the State PLS should notify the requesting State of the results. The requesting State must comply with the location timeframes set forth in §303.3(b)(3).

However, if the request is received through the central registry and the initiating State requests location services on its transmittal form, the responding State must handle the case as a formal interstate case and comply with the requirements at 45 CFR 303.7. The Federal regulations, at 45 CFR 303.7(c)(4)(i), require that the responding State IV-D agency must provide location services in accordance with 45 CFR 303.3. States must attempt to locate absent parents or sources of income or assets as provided at 45 CFR 303.3(b)(4). However, technical corrections to the standards for program operations, published in the Federal Register (55 FR 25839) and disseminated in OCSE-AT-90-05, revise 45 CFR 303.3(b)(4) such that in interstate location requests, responding States are not required to perform repeated location attempts as provided for in 45 CFR 303.3(b)(5).

If all location attempts under 45 CFR 303.3(b)(1), (2), and (3) are unsuccessful, the responding State should notify the initiating State IV-D agency of such and request additional information that can help in location attempts, as provided for under 45 CFR 303.7(c)(4)(ii). The initiating State IV-D agency has 30 days, under 45 CFR 303.7(b)(4), to furnish such information or notify the responding State when it will be provided.

If the responding State does not receive necessary additions or corrections to the form or documentation from the initiating State after requesting such additional information, the responding State may contact the initiating State and request permission from the initiating State to close the case. The responding State may close the case sooner than three years only if the initiating State notifies the responding State that it may close the interstate case. The case may be closed under 45 CFR 303.11(b)(5) if the absent parent's location is unknown, and the State has made regular attempts using multiple sources to locate the absent parent over a three-year period, all of which have been

unsuccessful.

Question 7: In closure reason (b)(4)(ii), how do we close the case on the putative father that has been excluded when there are other putative father(s) that have not been excluded yet or another putative father has been established as the father?

Response: We agree with the proposed RO response that, for purposes of case closure under 45 CFR 303.11, the paternity case must remain open until paternity has been established or all putative fathers excluded.

For purposes of completing the OCSE-156 and OCSE-158, where each putative father is counted as a separate case, the case of a putative father would be counted as closed when such putative father has been excluded from paternity, either by genetic testing and/or legal process, or when another putative father has been determined to be the father.

Question 8: Because of the way our current system is designed, it is very common for us to close one case on a family and to immediately open another. (Example: We would close the AFDC case and open a non-AFDC case, or vice-versa.) Is it acceptable for us to develop temporary closure codes to use on our cases until such time as the "total" case closes?

Response: The case in the example could not be closed under 45 CFR 303.11, but rather would have a change of status, from AFDC to non-AFDC, or vice-versa. For purposes of the OCSE-156 and 158, the case would be closed in the prior status, and opened in the new status. States should indicate in the case file when the status of the case changes if the State believes that such indication will improve their management of the IV-D caseload.

OCSE-PIQ-91-03
3/25/91

Allie Page Matthews
Deputy Director

Confidentiality/Safeguarding of Information

Regional Representative, OCSE
Region IX

This is in response to your request of November 7, for a review of proposed amendments to the California Welfare and Institutions Code drafted by the California Family Support Council (CFSC) to determine whether enactment of such legislation would be contrary to existing Federal law and regulations regarding confidentiality and safeguarding of information. The legislation proposes to permit information indicating the existence or imminent threat of a crime against a minor child to be disclosed to an appropriate law enforcement agency or State or county child protective agency, or used in judicial proceedings to prosecute the crime or protect the child victim.

As noted in your memorandum, child support practitioners may occasionally become aware, directly or indirectly, that a child may be or potentially could be the victim of criminal activity, such as abuse, neglect, or sexual exploitation. As you have indicated, they may feel compelled to report such suspicions or evidence, but question the restrictions imposed by nondisclosure laws and rules. Furthermore, all States have laws governing mandatory reporting of suspected child abuse or neglect. Such laws define such elements as reportable conditions, persons required to report, and sanctions for failure to report. California Penal Code Sections 11165-11166 specify California's mandatory reporting requirements. The mutual existence of nondisclosure laws and mandatory reporting of child abuse and neglect laws frequently causes dilemmas for professionals subject to the provisions of both laws.

Federal regulations governing safeguarding information at 45 CFR 303.21 provide that "(a) Under State statute which imposes legal sanctions, the use or disclosure of information concerning applicants or recipients of support enforcement services is limited to purposes directly connected with: (1) The administration of the plan or program approved under parts A, B, C or D of title IV or under titles II, X, XIV, XVI, XIX or XX or the supplemental security income program established under title XVI; (2) Any investigations, prosecution or criminal or civil proceeding conducted in connection with the administration

of any such plan or program; and (3) The administration of any other Federal or Federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need."

Since information concerning actual or suspected abuse or neglect of a child is "directly connected with administration of the title IV-B plan and program," the use and disclosure of information is permitted under §303.21(a)(1). The title IV-B program encompasses child welfare services, defined in section 425 of the Act, for the purposes of title IV, as "public social services which are directed toward the accomplishment of...(A) protecting and promoting the welfare of...neglected children; (and) (B) preventing or remedying, or assisting in the solution of problems which may result in, the neglect, abuse, exploitation, or delinquency of children...." Clearly, §303.21(a) permits information directly connected with the administration of title IV-B to be disclosed. Therefore, a IV-D agency which has or receives information regarding actual or suspected child abuse involving a family receiving services under title IV-D is not prohibited by section 303.21(a) from disclosing such information to the IV-B agency.

Section 5054 of P.L. 101-508, the Omnibus Budget Reconciliation Act of 1990 (OBRA '90), enacted November 5, 1990, provides further authority and demonstrates clear Congressional intent to not restrict the reporting of information concerning child abuse and neglect. Section 5054 amends section 402(a)(9), effective May 1, 1991, by designating a new clause (E) which essentially adds "reporting and providing information...to appropriate authorities with respect to known or suspected child abuse or neglect" to the list of limited purposes for which information concerning applicants or recipients of assistance under title IV-A may be used or disclosed.

The language of section 402(a)(16) of the Act was also amended by Section 5054 of P.L. 101-508, effective May 1, 1991, to read that a State plan must "provide that the State agency will--(A) report to an appropriate agency or official, known or suspected instances of physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment of a child receiving aid under this part under circumstances which indicate that the child's health or welfare is threatened thereby; and (B) provide such information with respect to a situation described in subparagraph (A) that the State agency may have."

Because these two requirements were added to the statutes governing the IV-A program and thus become components of the administration of the IV-A State plan and program,

IV-D agencies would be permitted to disclose information concerning known or suspected abuse or neglect of children receiving assistance under the IV-A program to the IV-A program under §303.21(a). It is clear, by enactment of Section 5054, that Congress intends such reporting to occur and that such reporting is one of the limited purposes for which information may be used or disclosed, as an exception to nondisclosure requirements. Under section 402(a)(16), the title IV-A agency would be obligated to notify the proper authorities about the likelihood of child abuse.

In view of OBRA '90, we intend to revise 45 CFR 303.21(a) to add a provision that is consistent with the changes to sections 402(a)(9) and 402(a)(16) of the Act and to make clear that such reporting is an exception to restrictions on disclosure of information. We suggest that the CFSC Legislative Committee may wish to examine their proposed legislation in light of the language of the amendments to sections 402(a)(9) and 402(a)(16) of the Act.

cc: OCSE Regional Representatives

OCSE-PIQ-91-04

April 11, 1991

Allie Page Matthews
Deputy Director

Child Support Services to IV-E Foster Care Cases

Gene Cavallero
OCSE Program Manager
Region I

This is in response to your memorandum of June 20, 1990, regarding Rhode Island's questions on IV-E foster care cases. In August, we wrote the Children's Bureau, Administration for Children, Youth and Families (ACYF), Office of Human Development Services (OHDS) regarding this matter. The responses to your questions are based on a memorandum we received from ACYF dated March 13.

Your questions and our responses are as follows.

Question 1: With respect to children eligible under the title IV-E program, must the State IV-E agency, the Department for Children and Their Families (DCF), refer all cases to the IV-D agency?

Response: The Child Support Enforcement Amendments of 1984 (P. L. 98-378) added a new section 471(a)(17) to the Social Security Act (the Act) which requires, in order for a State to be eligible for IV-E payments, that the State have a plan approved by the Secretary which "provides that, where appropriate, (emphasis added) all steps will be taken, including cooperative efforts with the State agencies administering the plans approved under parts A and D, to secure an assignment to the State of any rights to support on behalf of each child receiving foster care maintenance payments under this part."

The Children's Bureau issued Program Instruction ACYF-PI-85-1, dated January 1, 1985, which required amendments to the State title IV-E State plans. One of the amendments was to implement section 471(a)(17) of the Act which applies to child support collections made on or after October 1, 1984.

Also, on December 12, 1984, the Children's Bureau issued Information Memorandum ACYF-IM-84-27 which transmitted OCSE's Notice of Proposed Rulemaking regarding the Child Support Enforcement Amendments of 1984. This IM explains the responsibility of both the title IV-D child support enforcement agency and the title IV-E foster care agency for implementation of the requirements. The issuance indicates that it is the responsibility of the title IV-E foster care agency to refer all cases with assignments to the title IV-D agency and to ensure that

funds collected are appropriately managed.

The Information Memorandum also recommended that each State title IV-E agency arrange a meeting with the State title IV-D agency to clarify the assignment of title IV-E case procedures and determine whether and under what conditions the agency will pursue support payments for cases not receiving Federal funding. This recommendation was based upon the fact that there is variation in State laws and regulations governing the operation of title IV-D agencies.

Each quarter, States must also report to ACYF the title IV-E foster care collections made as an adjustment to expenditures.

It is the responsibility of the State title IV-E agency to initiate the action that will result in the assignment of rights to support for a child receiving title IV-E foster care maintenance payments. This does not apply to adoption assistance payments made under title IV-E.

Question 2: When seeking child support for those cases referred, must the IV-D agency seek support at the full rate of reimbursement? The full rate of reimbursement would be the actual cost of care.

Response: Federal regulations at 45 CFR 302.50(a) require that support obligations be established by court order or other legal process under State law, such as an administrative hearing process or a legally enforceable and binding agreement. In addition, the Family Support Act of 1988 (P. L. 100-485) revised the Social Security Act (the Act) regarding the use of guidelines in the establishment and modification of support orders. Support obligations established or modified on or after October 13, 1989, must use the State's guidelines for child support, in accordance with section 467 of the Act, as amended by section 103(a) of P. L. 100-485. The IV-D agency must use the child support guidelines for setting or modifying child support obligations in IV-E foster care maintenance cases, effective October 13, 1989, if such obligations are to be considered child support obligations enforceable by the IV-D agency.

The title IV-D agency does not have the authority to set or modify the amount of the title IV-E foster care monthly payment. These rates are set by the State with Federal matching funds and constitute the payment amount for the needs and care of the child in foster care. Federal regulations at §302.52(a) through (c) explain the distribution of child support collected in title IV-E foster care maintenance cases when child support payments are less than, more than, or the same as the monthly foster care payment.

Copies of ACYF-PI-85-1 and ACYF-IM-84-27 are attached. These policy issuances were sent to all State agencies which administer or supervise the administration of titles IV-B and IV-E of the Act.

OCSE-PIQ-91-05

April 11, 1991

Allie Page Matthews
Deputy Director

Impact of Program Standards on Virginia's New Paternity Law

Richard W. Gilbert
Acting Regional Representative
Region III

This is in response to the November 29, 1990, memorandum regarding Virginia's concerns about meeting the program standards for paternity establishment if they implement their new paternity acknowledgment law and procedures.

The Federal regulations, at 45 CFR 303.5 - Establishment of paternity, require that the IV-D agency must, within 90 calendar days of locating the alleged father, file for paternity establishment or complete service of process to establish paternity (or document unsuccessful attempts to serve process, under 45 CFR 303.3(c)), whichever occurs later in accordance with State procedures for paternity establishment.

According to your memorandum, there is no service of process under Virginia's new paternity law because the procedure is voluntary. While the alleged father does receive a formal notice to appear at the IV-D agency where he may voluntarily acknowledge paternity or request genetic testing, this formal notice is not service of process under Virginia law. If the alleged father does not cooperate in the new procedure, the Virginia IV-D agency would have to file for adjudication of paternity. Apparently, service of process for court adjudication in Virginia usually takes 60 to 90 days. You express concern that the IV-D agency would risk not meeting the 90 calendar day requirement for filing and service of process if they first attempt to use the new voluntary acknowledgment procedure and later determine that adjudication is necessary.

We are pleased that Virginia has instituted the new voluntary acknowledgment procedures, which may divert a significant portion of their paternity caseload from the traditional court-based process. However, it appears that service of process in Virginia needs streamlining. Federal reimbursement at the applicable matching rate is available for the costs of hiring process servers or otherwise purchasing process services when necessary to meet Federal requirements. We also encourage States to examine alternatives to personal service and redefine what constitutes service of process.

Consistent with Congressional encouragement for States to implement a simple paternity acknowledgment process such as Virginia's, we will, for purposes of the 90-calendar day timeframe, consider the formal notice that alleged fathers receive in the voluntary paternity acknowledgment procedure to constitute service of process. Therefore, Virginia would still be able to meet the timeframe requirement under 45 CFR 303.5(a)(1), as long as the filing for paternity establishment, as well as the formal notice to the alleged father, are accomplished within 90 calendar days of locating the alleged father. Virginia would then have to meet the one-year timeframe for paternity establishment, in §303.5(a)(2), within one year of the formal notice to the alleged father or the child reaching six months of age.

cc: OCSE Regional Representatives
Regions I, II, and IV - X

OCSE-PIQ-91-06

DATE: May 16, 1991

TO: Sharon M. Fujii
OCSE Regional Representative, Region IX

FROM: Allie P. Matthews
Deputy Director

SUBJ: Request for Policy Clarification Regarding Distribution of Support Collected

This is in response to your memorandum of December 27, 1990, requesting policy clarification regarding distribution of support collections. The specific issue raised concerned California's treatment of collections received through interception of lottery winnings, writs of execution, or liens, as "arrearages" or "past-due support" for distribution purposes.

California argues that lottery intercept collections (and certain other collections) do not meet the criterion in section 457(b)(1) of the Act of having been collected in the month when due. Section 102 of the Family Support Act amended section 457 to remedy a specific problem identified by the Congress: that is, obligors who made support payments timely, through withholding or otherwise, were sometimes not given credit for having paid support on time, merely because of delays in transmitting payments to the IV-D agency. As a consequence, the AFDC family was not sent the $50 pass through because the collections were treated as payment on past-due support by the IV-D agency. The Congress clarified that "the first $50 of payments for each prior month received in that month, which were made by the absent parent in the month when due" shall be paid to the family. California relies, in part, on the underlined new language to support their position that, since certain collections such as those from lottery intercepts, writs of execution, or property liens are not made in the month when due, they are not subject to the $50 pass-through requirement and, therefore, cannot be distributed as current support payments. We disagree. There is no distinction between involuntary payments, such as executions, withholdings, etc., and voluntary payments for purposes of section 457(b)(1) distribution.

California also argues that lottery interception collections cannot be treated for distribution purposes as current support because they are not made periodically and do not represent monthly support payments, as referenced in the first phrase of section 457(b)(1): "[O]f such amounts as are collected periodically which represent monthly support payments, the first $50..." We disagree. Support collections made through lottery intercept collections, writs of execution, and property

liens do represent monthly support payments and may be collected periodically. In any case, regulations at 45 CFR 302.51(a), rather than those at 45 CFR 302.51(b)(1), determine how collections are treated for distribution purposes and are clear. 45 CFR 302.51(a) states that amounts collected shall be treated first as payment on the required support obligation for the month in which the support was collected and if any amounts are collected which are in excess of such amount, these excess amounts shall be treated as amounts which represent payment on the required support obligation for previous months.

In reviewing the statute and Federal regulations, it is clear that the Federal and State income tax refund offset collections are the only exceptions to the requirement that, for purposes of distribution, collections should be treated first as payment on the required support obligation for the month in which the support was collected before distributing excess amounts to arrearages. Under section 464(a)(1) of the Act and the implementing regulations at 45 CFR 303.72(h)(1) and (2), collections received by the IV-D agency as a result of Federal income tax refund offset to satisfy AFDC, title IV-E foster care maintenance or non-AFDC past-due support shall be distributed as past-due support as required under 457(b)(4) or (d)(3) of the Act and §302.51(b)(4) and (5) or §302.52(b)(3) and (4) of the regulations. Section 466(a)(3)(B) of the Act and the implementing regulation at 45 CFR 303.102(g)(1), establish a similar exception for collections received as a result of State income tax refund offset.

States have no authority to create other exceptions which allow amounts collected to be applied toward arrearages rather than first applied to the required amount due in the month the collection is received. Therefore, State distribution procedures which define certain collections as "arrearages," other than Federal and State income tax refund offset amounts, would not meet Federal requirements under §302.51(a). Only if the required support obligation is met for the month in which the collection is received may any amounts be applied and distributed as past-due support, regardless of the nature of the enforcement action taken to obtain the collection or the regularity with which collections are made using various enforcement actions. The fact that a garnishment action may produce a one-time, lump-sum collection, that wage withholding may produce biweekly incremental payments, or that interception of lottery winnings may occur infrequently does not change the character of the amount collected to allow distribution to past-due support before current support.

As stated in your memorandum, California contends that §302.32(d) controls distribution under circumstances designated as "arrearage only" in the State Procedures Manual on Payment

Processing. It is our position that §302.32(d) cannot be read independently of §302.32(b) and (c) nor can any amount collected, (except for Federal and State income tax refund offsets collections) be applied to support owed for past months if the required support obligation for the month in which the collection was received is not yet paid.

If we can be of further assistance, please let us know.

OCSE-PIQ-91-07

DATE: June 3, 1991

TO: Suanne Brooks
Regional Representative, Region IV

FROM: Allie Page Matthews
Deputy Director

SUBJECT: Interest on Child Support Arrears

This is in response to your March 8, 1991, memorandum regarding interest on child support arrears. Questions from the Regional Office and Alabama and our responses follow.

Question 1: Does 45 CFR 302.75 consider interest to be the same as late payment fees?

Response: Final regulations for implementation of the Child Support Enforcement Amendments of 1984 (P.L. 98-378) were published in the Federal Register May 9, 1985 (50 FR 19608). In response to a comment asking us to indicate the difference between interest and late payment fees, we responded (page 19644) that "(l)ate payment fees are not considered interest. Interest makes up for the loss of purchasing power and is passed on to the family. For purposes of this program, late payment fees are a penalty for non-payment of support and are used to reduce a State's administrative costs. The State may collect both interest and late payment fees."

Question 2: One of Alabama's statutes calls for 12% interest per annum. Does the 12% interest rate conflict with the "not less than 3 percent nor more than 6 percent of overdue support" late payment fees addressed in 45 CFR 302.75?

Response: The Federal regulations at 45 CFR 302.75, including the percentage rate limits, apply to late payment fees which are retained by the State, not to interest that may be forwarded to the family. There are no IV-D restrictions on the percentage of interest which a State may charge.

Question 3: Is it allowable for the IV-D agency to collect interest on child support arrears?

Response: The Federal regulations do not prohibit collecting interest in IV-D cases.

Question 4: If it is allowable, how does the interest collected fit into the distribution scheme?

Response: The Federal regulations at 45 CFR 302.51 and 302.52 address the requirements and options for IV-D agency distribution

of support collections. Amounts collected must first be treated as payment on the required support obligation for the month in which the support is collected and any excess amounts as payment on the support obligation for previous months. Additionally, the Federal regulations at 45 CFR 302.32(f) specify the timeframes for distribution of support payments. Federal regulations do not specifically address how interest amounts collected on arrears are to be distributed.

Question 5: Is the material distributed at the National Child Support Enforcement Association in Los Angeles an appropriate guide for policy development?

Response: We believe that the material attached to the incoming memorandum could be of use in policy development for States interested in charging interest on arrears. However, in part, the material merely poses questions rather than provides answers to issues related to charging interest in
IV-D cases. State policy must be developed in accordance with the State's laws and Federal requirements. Additional assistance is available from the OCSE Regional Office.

cc: Acting OCSE Regional Representatives
Regions I - III and V - X

OCSE-PIQ-91-08

DATE: June 18, 1991

TO: Marvin Layne
Acting ACF Regional Administrator, Region VI

FROM: Allie Page Matthews
Deputy Director
Office of Child Support Enforcement

SUBJECT: Medicaid Agency Incentives for IV-D Agency Enforcement of Medical Support

This is in response to Norma Goldberg's memorandum of February 7, 1991, requesting clarification of OCSE policy regarding treatment of State Medicaid agency incentives for performance of medical support enforcement activities. The specific issue concerns whether incentive payments received by the IV-D agency should be considered as program income for purposes of 45 CFR 304.50 when the source of such incentive amounts is State funds.

As indicated in your memorandum, the Texas IV-D agency has contracted, through a purchase-of-service agreement, to provide health insurance coverage information regarding the absent parent to the Texas Medicaid agency. The Medicaid agency then recovers its medical care costs from the third party health insurance carrier of the absent parent. Under the agreement, the Medicaid agency has agreed to pay the IV-D agency an incentive of 25 percent of the State share of any Medicaid amounts recovered when such recovered amount is from the third party health insurance carrier of an absent parent about whom the IV-D agency provided information to the Medicaid agency.

At least two other State IV-D agencies receive incentives, bonuses, or other State-funded payments for performing medical support enforcement activities. Minnesota recently enacted legislation that provides for a bonus incentive to be paid to the local IV-D agency by the Medicaid agency for identifying or enforcing medical support provisions. The bonus incentive is based on the ratio of the number of cases with coverage in effect divided by the number of cases with medical support in the support order. The rate for the bonus incentive can range from $15 for each new case when the ratio is 50 percent or less, $20 for each new case when the ratio is greater than 50 percent but less then 80 percent, and $25 for each new case when the ratio is at least 80 percent. The bonus incentive program is financed through a State legislative appropriation.

Wisconsin also recently enacted legislation which authorizes the Medicaid agency to make incentive payments to other agencies, including AFDC, IV-D, and Indian agencies, which report health insurance coverage information to the Medicaid agency. The

incentive payment is $10 per person reported with a basic medical plan, a drug card plan or a dental plan, so the reporting agency could potentially receive an incentive payment of up to $30 per person, assuming basic medical, drug card, and dental plans are all available and reported. There are also incentive payments for reporting to the Medicaid agency any changes or lapses in insurance coverage.

The State IV-D agencies cited above are receiving incentive payments for performing activities that they are required to perform to meet OCSE program requirements and there is nothing in the OCSE regulations that would preclude receiving such incentives. Furthermore, OCSE regulations governing program income at 45 CFR 304.50 do not require that the State IV-D agency treat incentives derived from State funds as program income. We encourage States to use State funds to pay IV-D agencies incentives for aggressive pursuit of medical support. To interpret 45 CFR 304.50 to require these State-funded incentives to be counted as program income would be counter-productive. If States to use State funds to provide incentives to IV-D agencies for performing medical support enforcement activities, we applaud such innovative collaboration between IV-D and Medicaid agencies.

OCSE-PIQ-91-09

DATE: August 16, 1991

TO: Acting Regional Administrators
Regions I - X

FROM: Allie Page Matthews
Deputy Director
Office of Child Support Enforcement

SUBJECT: Review and Adjustment of Child Support Orders in Interstate Cases

Attached is our response to an inquiry from Arkansas requesting policy guidance concerning review and adjustment of child support orders in interstate cases. In response to the questions raised, we explain the responsibilities for sending notices, conducting reviews, and adjusting child support orders when more than one State is involved with a IV-D case. Until final regulations are issued governing review and adjustment in interstate cases more explicitly, the response is based upon the statutory provisions of section 466(a)(10) of the Social Security Act.

Attachment

Mr. Ed Baskin, Administrator
Child Support Enforcement Unit
Arkansas Department of Human Services
P.O. Box 1437
Little Rock, Arkansas 72203-1437

Dear Mr. Baskin:

This is in response to your letter of June 5 to Andrew Hagan concerning responsibilities for reviewing and adjusting child support orders in interstate cases.

Your specific questions and our responses are:

1. In an interstate case, which State has responsibility for sending the notice of a review, conducting a review and proceeding, if appropriate, to adjust the order?

Response - Under section 466(a)(10)(A) of the Social Security Act (the Act), each State is required, by October 13, 1990 to develop a plan for how and when child support orders in effect in the State are to be reviewed and adjusted. In accordance with such plan, if the State determines that a child support order being enforced through the IV-D program should be reviewed, the State must initiate a review at the request of either parent subject to an order or at the request of a State child support enforcement agency. This would include interstate requests. The State must adjust such orders, as appropriate, in accordance with presumptive guidelines for setting child support award amounts established pursuant to §467(a) of the Act. In general, any State with an order for child support being enforced under IV-D is responsible for responding to requests for review from either parent or a State IV-D agency.

On October 13, 1993, the requirements become more stringent, mandating reviews every 3 years in AFDC cases except where a review is determined not to be in the best interests of the child and in non-AFDC cases, unless neither parent requests review. The State in which the review is conducted is responsible for sending the notice of the review, conducting the review and adjusting the order, as appropriate, and for notifying the other State of the results of any review and adjustment.

In the notice of proposed rulemaking published August 15, 1990 (55 FR 33418), OCSE specifies procedures to follow in interstate cases. If a State is enforcing an order from another State (e.g. by wage withholding) and a review is requested by the absent parent or the enforcing State otherwise determines a review is warranted because of some change in the absent parent's circumstances, the responding State should contact the State with the order, provide required information, and request that the State with the order conduct the review. The State with the order should conduct the review, according to its guidelines for setting child support award amounts, and, if appropriate, adjust

the order. Until final Federal regulations governing review and adjustment are issued, States have flexibility and discretion to work out procedures for handling these issues using existing State laws and processes.

2. In a case in which another State entered the original order and Arkansas has just registered that order and enforced it; which State is responsible for sending the notice of a review, conducting a review and proceeding, if appropriate, to adjust the order?

Response - Any State with an order is responsible for the review, and adjustment, if appropriate, of the order, in accordance with its guidelines for setting child support orders. The situation is more complicated when more than one State has a support order. If, in the case presented, Arkansas entered a new order pursuant to URESA or registered the existing order and assumed jurisdiction to obtain a modification, either the State where the original order was entered or Arkansas would have the authority to conduct a review. However, if Arkansas merely initiated procedures for wage withholding, only the initiating State will have jurisdiction to review and adjust the order in accordance with State guidelines.

3. In a case in which no support order existed until Arkansas established an order for support at the request of another State, which State has the responsibility for sending the notice of a review, conducting a review and proceeding, if appropriate, to adjust the order?

Response - Under the facts presented, Arkansas would be the only State with an order. Therefore, Arkansas would have the responsibilities of sending the notice, conducting a review and adjusting the order, as appropriate, upon request of either parent or of a State child support agency.

4. In a case in which the original order was entered in Arkansas but subsequently another State was asked to enforce it (and may have obtained an independent order for support in the responding State), which State has the responsibility for sending the notice of a review, conducting a review and proceeding, if appropriate, to adjust the order?

Response - In this case, if Arkansas is the only State with an order, it has the responsibility to respond to a request for review and to adjust the order, as appropriate, in accordance with guidelines. If another State subsequently obtained an order for support under URESA, such State could be requested to undertake review and adjustment.

5. In a case in which Arkansas does not have an order but asked another State to obtain an order, which State has the responsibility for sending the notice of a review, conducting the

review and proceeding, if appropriate, to adjust the order?

Response - Because, under the facts presented, the only order which may be reviewed and, if appropriate, adjusted, exists in another State, the responsibilities for review and adjustment fall upon the other State. However, the Arkansas IV-D agency, as "a State child support enforcement agency," may request such other State to conduct the review.

6. In cases involving multiple different States, (e.g., one State has the order, the custodial parent is in another State, and the absent parent is in a third State), which State is responsible for sending the notice of a review, conducting the review and proceeding, if appropriate, to adjust the order?

Response - Section 466(a)(10)(A) specifies reviews of "orders in effect in the State" and "being enforced under IV-D." The State with the order is primarily responsible from a jurisdictional perspective. However, since under the facts presented, neither party is presently in the State with the order, this procedure may be inconvenient. Under these circumstances, it may be appropriate for the order to be registered in a State where one of the parties resides. To make such registration effective in order to conduct a review and adjust the order, if appropriate, personal jurisdiction over the nonmoving party may also be required.

Some of the State jurisdictional problems you have identified may be addressed by the National Conference of Commissioners on Uniform State Laws which is in the process of redrafting URESA, or by the Commission on Interstate Child Support authorized under the Family Support Act of 1988. We encourage you to follow the progress of those organizations.

I hope this information is helpful. Please contact me if I can be of further assistance.

Sincerely,

Elizabeth Matheson

Director, Policy &
Planning Division
Office of Child Support
Enforcement

cc: Norma Goldberg
FSA Regional Administrator, Region VI

OCSE-PIQ-91-10

DATE: September 6, 1991

TO: Acting Regional Administrators
Regions I - X

FROM: Allie Page Matthews
Deputy Director
Office of Child Support Enforcement

SUBJECT: Wage Withholding When the Obligor is a Federal Employee

Sections 459 and 466 of the Social Security Act (the Act) clearly require that Federal employees are subject to garnishment or income withholding brought for the enforcement of child support. Despite this, IV-D agencies continue to experience sporadic problems in establishing wage withholding with Federal agencies, particularly with service of process.

Federal agencies are bound by regulations issued by the Office of Personnel Management (OPM) at 5 CFR Part 581 for implementing wage withholding. With respect to service of process, we have maintained in the past that 5 CFR 581.102(f)(1)(iii) applies in those cases where the State issues the withholding notices under an administrative process. We have recently learned that OPM has amended this regulation (attached) by adding a new paragraph at §581.102(f)(1)(iv) extending the definition of legal process to include IV-D withholding notices issued by State agencies authorized to do so pursuant to section 466(b) of the Act (42 U.S.C. 666(b)). We have also brought this matter to the attention of one Federal agency (attached).

We are sending the new regulation to State IV-D Directors with a Dear Colleague letter.

Attachments

OCSE-PIQ-91-11

DATE: October 11, 1991

TO: Ann Schreiber
ACF Regional Administrator
Region II

FROM: Allie Page Matthews
Deputy Director
Office of Child Support Enforcement

SUBJECT: Timing of Respondent Refunds of IRS Tax Refund Offset Collections In Non-AFDC Cases

This is in response to your memorandum dated July 9 regarding one jurisdiction's interpretation that Federal income tax refund offset policy permits a delay of up to six months in the issuance of refunds of excess offsets to absent parents when the case is non-AFDC and involves a joint tax return.

The questions and our responses are as follows:

Question 1: When must a IV-D agency initiate action to refund excess Federal income tax refund offset collections to an absent parent and his/her spouse in a non-AFDC joint return case?

Response: Under section 464(a)(3)(D) of the Social Security Act and 45 CFR 303.72(h)(4), if an amount collected is in excess of the amounts required to be distributed under §§302.51(b)(4) and (5) or 302.52(b)(3) and (4), the IV-D agency must repay the excess to the absent parent whose refund was offset or jointly to the parties filing a joint return within a reasonable period in accordance with State law. As stated in the preamble to the Final Regulations implementing the Child Support Enforcement Amendments of 1984 (50 FR 19617, dated May 5, 1985), if, as a result of the administrative review, an amount which has already been offset is found to exceed the amounts of past-due support owed, the IV-D agency must refund the excess amount to the absent parent promptly. However, this does not preclude the State from negotiating directly with the absent parent under State law to apply the refund to other arrearages or future support. These negotiations, if any, may not be used to circumvent the requirement that States must promptly refund excess amounts which are offset. We encourage States to make refunds as quickly as possible. A State or local jurisdiction cannot delay a refund merely because it has not yet received the offset amount.

Question 2: Can the commencement of refund action be delayed for up to six months in any situation, such as when no request for an administrative review is received from the absent parent or when only a partial refund is required?

Response: As stated above, States are required to repay amounts due to the absent parent promptly. The six month period set forth in section 464(a)(3)(B) of the Act and 45 CFR 303.72(h)(5) specifies the maximum timeframe during which amounts received through the Federal income tax refund offset may be held before distribution to the custodial parent. It does not apply to returning or repaying funds to the absent parent. IV-D agencies may not use the six month period specified in §303.72(h)(5) to delay repaying excess offset amounts to absent parents.

The purpose of delaying distribution to custodial parents is to allow the non-obligated spouse an opportunity to file an Injured Spouse Claim with the IRS to recoup his/her portion of any refund due. In fact, IRS encourages the injured spouses to file the amended returns at the time the original tax return is filed to preclude the need for an IRS adjustment. However, we want to stress that States may not routinely hold Federal income tax refund offset collections in non-AFDC cases for up to six months. The IV-D agency must receive a notice that a joint refund is involved before distribution to custodial parents may be delayed in such cases.

If you have any further questions or concerns, please feel free to contact us.

OCSE-PIQ-91-12

November 25, 1991

TO: Steve Kenigson
ACF Regional Administrator

FROM: Allie Page Matthews
Deputy Director, OCSE

SUBJECT: U.S. Department of Labor - Use of Wage Withholding for Moneys Owed to Individuals in Wage and Hour Disputes

This in response to Natalie de Maar's memorandum of August 23 regarding the failure of the U.S. Department of Labor (DOL) to honor several wage withholding requests from the Alaska Child Support Enforcement Division (CSED) with respect to moneys owed to individuals in a wage and hour dispute with an employer for whom the DOL was acting as mediator.

The Federal statute at 42 U.S.C. 659 provides for consent by the United States to garnishment proceedings for the collection of child support from moneys owed to individuals based on remuneration for employment due from or payable by the United States. The statute at 42 U.S.C. 662(f) defines remuneration for employment as "compensation paid or payable for personal services or periodic benefits payable on account of personal services." Regulations at 5 CFR 581.103 and 581.104 enumerate those moneys which are, and are not, subject to garnishment. Based on the above, it is our position that the phrase "remuneration for employment due from or payable by the United States" refers to personal services performed for the United States. Since the obligers in question are not Federal employees, and the DOL is a third party holder of funds due to the obligers, such funds are not subject to garnishment or wage withholding actions.

In a similar case, Lenz v. Lenz. 723 F. Supp. 1329 (1989), the Federal District Court for the Northern District of Iowa held that the Iowa Child Support Recovery Unit (CSRU) could not garnish funds held by the National Labor Relations Board (NLRB) that were payable to workers as back pay awarded in a labor relations dispute. Although the public interest in ensuring the payment of child support places the State agency above the average creditor, the court stated, the Federal interests that the NLRB awards are meant to effectuate must prevail, especially where the State agency is free to garnish the award after the NLRB has paid it to the worker. The 8th Circuit Court of Appeals affirmed this decision (915 F. 2nd. 388).

Therefore, while child support regulations at 45 CFR 303.100(f) permit States to extend their withholding systems to other forms of income other than wages, such expanded enforcement actions are not possible in cases where funds are held by a Federal agency serving in the capacity of a dispute mediator rather than an employer or payor of income.

Certainly, once the funds have been disbursed to an obligor, the IV-D agency may pursue collection through garnishment of the obligor's account. The NLRB, in its discretion, will at times seek to accommodate Federal and State agencies' attempts to reach backpay awards. When requested by a garnishor, the Board may notify the garnishor that it is about to disburse the backpay award, affording the garnishor the opportunity to immediately attach the monies once disbursed to the obligor. Additionally, the Board has on occasion received a waiver from the recipient of the backpay award, allowing the Board to forward some or all of the backpay award directly to the garnishor. The Alaska CSED may wish to consider a similar approach with respect to the DOL. Alternatively, a IV-D agency, where appropriate, could seek an order of the court directing the obligor to deposit the backpay award with the court in the form of a bond or security to guarantee payment, in conjunction with a contempt proceeding, or through other proceedings available under State law.

cc: ACF Regional Administrators
Regions I - IX

OCSE-PIQ-91-13

DATE: December 11, 1991

TO: ACF Regional Administrators
Regions I - X

FROM: Allie Page Matthews
Deputy Director
Office of Child Support Enforcement

SUBJECT: Federal Financial Participation (FFP) for Obtaining Affidavits of Paternity at the Time of Birth

We are aware of various initiatives underway in a number of States to secure paternity acknowledgments at the time of a child's birth through cooperative efforts involving hospitals and physicians. For example, Washington State law requires physicians, midwives, and hospitals to "provide an opportunity" for a cooperative mother and father to sign an Affidavit of Paternity at the time of birth. State law also requires the Office of Support Enforcement (OSE) to pay physicians, midwives, and hospitals $20.00 for each completed Affidavit. The affidavits provide OSE with a presumption of paternity which allows for administrative determination of a child support obligation and an obligation to provide medical insurance; a valid social security number (SSN) for the father of the child; and a valid address for the father. Of the affidavits obtained, Washington OSE is able to match one-third of them to current IV-D cases. In Virginia, the IV-D agency attempts to obtain voluntary acknowledgments of paternity shortly after a child's birth and pays $20.00 to the hospital if paternity is established. Michigan is considering establishing a similar project.

Questions have arisen regarding the availability of Federal Financial Participation (FFP) for costs associated with obtaining the affidavits. Under 45 CFR 304.20(b), FFP is limited to services and activities pursuant to the approved title IV-D State plan which are determined by the Secretary to be necessary expenditures properly attributable to the Child Support Enforcement program. FFP would be available for any administrative costs which may be associated with publicizing availability of services, as required under 45 CFR 302.30, such as providing information about the Child Support Enforcement program and IV-D applications. Additionally, we previously stated in OCSE-AT-90-04, dated May 4, 1990, that Federal funding, at the applicable matching rate, is available for the establishment of, and cost related to, necessary agreements between State Vital Statistics Offices and IV-D agencies for the

request and transfer of SSNs. For example, FFP would be available for the costs of the IV-D agency maintaining a master file of records provided by Vital Statistics Bureaus. Since SSNs are provided as part of the affidavits obtained and the affidavits may be a necessary step in issuing a birth certificate, reasonable and necessary costs identified with collecting and maintaining the information, such as the $20.00 payment for each completed affidavit, may be reimbursed. Providing any other services in those cases which are not currently IV-D cases would not be eligible for FFP.

We recognize the valuable use of information obtained from the parents in conjunction with this process, as well as the importance of seeking acknowledgments close in time to a child's birth. We applaud the efforts of States in establishing processes through which such acknowledgments may be readily obtained.

OCSE-PIQ-91-14

DATE: December 3, 1991

TO: Steve Henigson
ACF Regional Administrator
Region X

FROM: Allie Page Matthews
Deputy Director
Office of Child Support Enforcement

SUBJECT: Case Closure Criteria

We apologize for the delay in responding to Edward Singler's memorandum of August 27, 1991, regarding recommended responses to the Washington State request for clarification of OCSE policy for case closure criteria in four specific situations. We agree with the proposed resolutions and offer the following.

Question 1: In a paternity case, the identity of the father is unknown. Since the IV-D agency has no Social Security Number or date of birth, quarterly efforts to get information from the custodial parent are unproductive and border on harassment. What locate efforts must the IV-D agency try? Do they need quarterly efforts or is an annual review for the Federal Parent Locator Service (FPLS) submission adequate?

Response: The requirements for repeat location attempts, at 45 CFR 303.3(b)(5), allow quarterly attempts to be limited to automated sources. States are required, at 45 CFR 303.3(b)(6), to submit cases to the FPLS at least annually, if cases meet the requirements for submittal. An annual review and attempt to get additional information from the custodial parent would be sufficient case activity under these circumstances.

Question 2: Federal regulations, at 45 CFR 303.3(b)(5), provide that a case must "meet requirements for submittal for location." Does this statement refer to submittal for FPLS? Or, does it refer to normal in-State locate efforts? We have cases which lack minimum qualifications for FPLS submission. What do we do?

Response: The Federal regulations, at 45 CFR 303.3(b)(6), require submittal to the FPLS at least annually of cases in which location is needed, previous attempts to locate have failed and which meet the requirements for submittal. The Federal regulations, at 45 CFR 303.3(b)(5), require repeat location attempts in cases in which previous attempts have failed, but adequate information exists to meet requirements for submittal for location, either quarterly or immediately upon receipt of new information which may aid in location. The requirement in 45 CFR 303.3(b)(5) refer to non-FPLS locate efforts. Annual resubmittal of a case to the FPLS is not required if a case does not meet the

minimum qualifications for FPLS submittal. Should there be inadequate information to meet requirements for submittal to State locate services or the FPLS, a State should review the case annually and contact the custodial parent to attempt to secure additional information which may lead to location.

Question 3: In an AFDC paternity case, the custodial parent has not cooperated. She will not provide even the minimum information needed to file and adjudicate a paternity action. The AFDC agency has taken that parent off the AFDC grant. May we close the case?

Response: The case closure criteria contained in 45 CFR 303.11(b) do not allow the IV-D agency to close the IV-D case when the AFDC custodial parent refuses to cooperate and is removed from the AFDC grant. The IV-D agency must continue to attempt to identify and locate an alleged father and to establish paternity, if possible.

Question 4: In an AFDC paternity case, the child dies before the courts establish paternity. May the IV-D agency close the case?

Response: The case closure criterion contained in 45 CFR 303.11(b)(2) allows case closure if there is no current support order and the arrearages are under $500 or unenforceable under State law. We agree that, if the child dies before paternity is established in an AFDC paternity case, the IV-D agency may close the case for that child.

cc: Regional Administrators
Regions I - IX

OCSE-PIQ-91-15

DATE: December 11, 1991

TO: Linda Carson
ACF Regional Administrator
Region VII

FROM: Allie Page Matthews
Deputy Director
Office of Child Support Enforcement

SUBJECT: Dissemination of Information Contained in the Policy Information Question Regarding States' Voluntary Paternity Acknowledgment Processes

This is in response to Dwight High's memorandum of May 21, 1991, which sought clarification of issues raised in OCSE-PIQ-91-05 and whether the policy contained in OCSE-PIQ-91-05 applies to voluntary paternity acknowledgment processes in all States. The questions and our responses follow. We apologize for our delayed response.

Question 1: Does the policy promulgated in OCSE-PIQ-91-05 apply to all States' voluntary paternity acknowledgment processes which include formal notices to alleged fathers of the process?

Response: Yes, the policy promulgated in OCSE-PIQ-91-05 applies to all States' voluntary paternity acknowledgment processes which include formal notices to alleged fathers of the process.

Question 2: What conditions must such notices meet in order to satisfy the timeframe requirement under 45 CFR 303.5(a)(1)?

Response: Under 45 CFR 303.5(a)(1), for all cases needing paternity establishment, the IV-D agency must, within no more than 90 calendar days of locating the alleged father, file for paternity establishment or complete service of process to establish paternity, whichever occurs later in accordance with State procedures. OCSE-PIQ-91-05 allows States with voluntary paternity acknowledgment processes, which commence with formal notice to the alleged father, to count the initial notice as service of process for purposes of the timeframe requirement. The State then has 90 days from locating the alleged father to file for paternity if necessary because filing would occur later than service of process. Therefore, the State has more time to obtain a voluntary paternity acknowledgment prior to filing a court action, but still must establish paternity within one year of commencing the acknowledgement process by formal notice to the alleged father.

A notice provided as part of the voluntary paternity acknowledgement process must commence formal proceedings to

establish paternity. Notices may be served by any procedure which meets State requirements, so long as a verifiable date of "successful service of process" is returned and maintained in the case file. This date will be used for purposes of computing the one-year timeframe under 45 CFR 303.5(a)(2(i).

Question 3: Could this information be issued to the States in a "Dear Colleague" or an Action Transmittal in the near future?

Response: PIQ's are official statements of policy which Regional Offices must pass on to States using the method they choose. There should be, therefore, no need for an additional issuance to States from the Central Office.

cc: ACF Regional Administrators
Regions I - VI and VIII - X

OCSE-PIQ-91-16

DATE: December 19, 1991

TO: OCSE Regional Representatives
Regions I - X

FROM: Allie Page Matthews
Deputy Director
Office of Child Support Enforcement

SUBJECT: Release of Child(ren)'s Social Security Numbers for Medical Insurance Enrollment Purposes and for Interstate Child Support Enforcement

We have received several comments on the policy specified in OCSE-PIQ-91-01 which indicated that the release of children's Social Security numbers (SSN's) to absent parents or absent parents' health insurance companies in order to enroll children in medical insurance is not directly connected with the administration of the IV-D program or other programs referenced in the Federal regulations at 45 CFR 303.21(a).

One commenter suggested that obtaining health insurance should be considered a purpose directly connected with the administration of the IV-D program, since obtaining medical support is an audit and State plan requirement, and that program requirements should not make it more difficult for the absent parent to obtain the required health insurance by withholding any information necessary for enrolling children under the health insurance policy.

We agree that OCSE-PIQ-91-01 incorrectly stated that release of SSN's for health insurance purposes is not directly connected with the administration of the IV-D program or other programs referenced in the Federal regulations at 45 CFR 303.21(a). There is no prohibition under the Title IV-D program that would prevent or limit the disclosure of SSN's for health insurance enrollment purposes.

However, as we stated in OCSE-PIQ-91-01, States should be cognizant of the constraints the Privacy Act of 1974 (P.L. 93-579) places upon the use and release of SSN's. While under P.L. 93-579 there are no direct Federal prohibitions against redisclosure by a State of a SSN voluntarily disclosed by a member of the public, a State requesting disclosure must inform the individual whether the disclosure is mandatory or voluntary, the legal authority for the request, and what uses will be made of the SSN (See 5 U.S.C. 552a note (b)). Under the provisions of P.L. 93-579, a State may not redisclose a SSN if the use to which the SSN would be put was not disclosed at the time of the initial request. It should also be noted that redisclosure of a SSN in violation of the laws of the United States is a felony punishable

by a fine or imprisonment for not more than five years, or both (See 42 U.S.C. 408(a)(8), formerly 42 U.S.C. 408(h)).

Some practical ways of ensuring compliance with the Privacy Act include notifying applicants/recipients in or as a part of the IV-D application and program information which must be provided to IV-D recipients under §303.2(a)(2). Such information could inform applicants/recipients that SSN information is necessary and may be used and released for various purposes, such as locating the absent parent, cataloging the case files, submitting cases for Federal and State income tax refund offset, and enrolling children as beneficiaries of health insurance coverage.

In addition, another State noted that the standardized URESA petition forms provide a place for SSN's of children and a copy of this petition is served on the respondent. The State asked whether they could assume that this disclosure would be acceptable since filing the action has a direct connection with the administration of the IV-D program. Yes, we consider the use of the standardized interstate referral forms to be directly connected with the administration of the IV-D program. The Privacy Act requirements also apply to the use of SSN's on the URESA forms. Therefore, States should routinely inform applicants for child support services that the SSN's they divulge may be used in interstate child support enforcement procedures and that as part of the procedure the noncustodial parent will receive this information.

OCSE-PIQ-91-17
DATE: December 20, 1991

TO: Linda J. Carson
ACF Regional Administrator
Region VII

FROM: Allie Page Matthews
Deputy Director
Office of Child Support Enforcement

RE: Iowa's Requirement of Double Barrel Certificates as a Supporting Document in Interstate Income Withholding Requests

This is in response to your request of October 23, 1991 seeking clarification of OCSE policy regarding whether States may require other jurisdictions to complete responding State-specific forms as part of, or as a prerequisite to, interstate case processing. Your specific question concerns Iowa's statutory requirement that a judicial record of another State may be proved by "the attestation of the clerk and the seal of the court annexed, if there is a seal, together with a certificate of a judge, chief justice, or presiding magistrate that the attestation is in due form of law."

Iowa's requirement effectively requires that any child support order being used as a basis for enforcing a support obligation in Iowa must have a "double barrel" certificate attached in order to authenticate it. As indicated in your memorandum, Iowa is unable to honor interstate withholding requests unless the underlying support order has such a certificate attached. You have advised that Iowa has received some resistance to this requirement from other States on the basis that Federal policy prohibits States from requesting or requiring additional forms which substantially duplicate, or duplicate in part, the content or purpose of the mandatory interstate forms.

Your specific question and our response are as follows:

Question: Must initiating States comply with a responding States's request for additional supporting documentation?

Response: The various responsibilities of initiating and responding States in providing information are set forth in 45 CFR §303.7. Under §303.7(a)(3), if the documentation received with a case is inadequate and cannot be remedied by the central registry without the assistance of the initiating State, the

central registry must forward the case for any action which can be taken pending necessary action by the initiating State. This

means that the central registry may not reject the case. It is our position that if the interstate forms are completed and the only missing element is the "double barrel certificate" the Iowa central registry should forward the case to the local or State unit responsible for processing the requested action. Many activities, such as obtaining employer information, sending notices where appropriate or necessary, and determining the amount to be withheld should be able to be accomplished without the "double barrel certificate."

Section 303.7(b)(3) specifies that the initiating State must provide the IV-D agency in the responding State sufficient, accurate information to act on the case by submitting with each case any necessary documentation and either the Interstate Child Support Enforcement Transmittal Form or the URESA Action Request Forms package as appropriate. Under §303.7(b)(4), initiating States are responsible for providing the IV-D agency or central registry in the responding State with any requested additional information.

The right of a responding State to request additional information is set forth in §§303.7(c)(4)(i) and (ii). If a responding State is unable to proceed with the case because of inadequate documentation, it must notify the IV-D agency in the initiating State of the necessary additions or corrections to the form or documentation. If the documentation received with a case is inadequate and cannot be remedied by the responding IV-D agency without the assistance of the initiating State, the IV-D agency must process the interstate case to the extent possible pending necessary action by the initiating State.

The key issue is whether the Iowa "double barrel" certificate is a State-specific form which duplicates the standardized interstate forms or is, in fact, "necessary documentation." In OCSE-PIQ-90-05, we specified that States may not request or require additional forms which substantially duplicate or duplicate in part the content or purpose of the mandatory interstate forms. We further stated that States may not use §303.7(c)(4)(ii) to justify requiring initiating States to complete additional forms containing some or all of the information contained in the mandatory Federal forms. Later, in OCSE-PIQ-90-13, we reiterated this position in response to an inquiry regarding whether Illinois could require other States to complete "Affidavits of Payment" and "Affidavits of Arrears."

In section VII ["Attachments"] of the "Child Support Enforcement Transmittal" (Form FSA-200) various possible items of "supporting documentation" are listed as potential additional enclosures. Furthermore, the instructions which accompany the forms explicitly encourage States to attach supporting documents to

substantiate the referral. For instance, in explaining how to complete items 1 and 2 of Section V of the General Testimony,

users are advised in boldface type to "(r)emember to attach certified copies of all pertinent orders that relate to support."

In addition, in the "State-At-A-Glance" directory, which OCSE distributed on diskette to each State in December 1990, each States' documentation requirements for performing the various case activities are specified. This indicates that although Federal regulations mandate the use of certain standardized forms, each State has requirements and procedures for the form and number of various items of "necessary documentation" in addition to the completed forms. It also recognizes that individual cases may have certain documentary information which may be necessary and beneficial to responding States in handling interstate requests.

It is our position that since the information contained in the "double barrel" certificate is not replicated in the standardized interstate forms, and because State law mandates use of authenticated copies of orders, initiating States must honor requests from Iowa to supply a "double barrel" certificate. However, Iowa may not delay or refuse to process cases referred by other States on the basis that the documents received do not contain the "double barrel" certificate. Cases must be processed to the fullest extent possible, awaiting receipt of the requested information.

cc: ACF Regional Administrators
Regions I-VI, VIII-X

OCSE-PIQ-92-01
DATE: January 31, 1992

TO: Marion Steffy
ACF Regional Administrator
Region V

FROM: Allie Page Matthews
Deputy Director
Office of Child Support Enforcement

RE: Federal Financial Participation for Dispute Resolution Processes

This is in response to your request of November 14, 1991 seeking a statement of OCSE policy concerning whether, and to what extent, Federal Financial Participation (FFP) is available for the costs of operating a State IV-D dispute resolution process.

The "dispute resolution process" you describe would provide an opportunity for an applicant for or recipient of child support services through the State IV-D program to determine whether support collections are properly distributed, and to provide information or otherwise help the IV-D agency in its determination of what action may be appropriate for a case. While there is no Federal requirement that States establish or make available such processes, we understand that some States permit specific grievances to be addressed and resolved through administrative hearings.

There is no statutory requirement that States establish IV-D program hearing procedures equivalent to those required under §402(a)(4) of the Social Security Act. OCSE has not issued regulations in this area because States have broad discretion to determine what services are appropriate in individual cases, and most problems can be resolved through informal communication between the caseworker and recipient of IV-D services.

In the preamble to final regulations issued August 4, 1989, governing standards for program operations (54 FR 32292), we responded to comments asking OCSE to require States to establish a grievance process to resolve disputes with respect to timely and accurate distribution of collections. We noted that several commenters requested that the process be extended to resolve disputes over adequate provision of all services to ensure that the program standards requirements are followed by the States. We explained in our response that there is nothing to preclude a State from setting up such a system to resolve disputes. We

stated that there is no evidence to suggest that such processes are warranted in all States. We further noted our belief that

most States are distributing collections accurately and that grievance procedures are unnecessary. These statements continue to reflect our position.

States are, however, encouraged to maintain close communication between recipients of IV-D services and IV-D caseworkers, to provide information, and to be responsive to concerns regarding case processing. We believe that many concerns can be resolved by providing clear explanations of agency policy and through open discussions between IV-D caseworkers and recipients of IV-D services, without escalating discrepancies to an adversarial hearing.

Your specific questions and our responses are as follows:

Question 1: Are State IV-D dispute resolution processes eligible for Federal financial participation? If so, what is the Federal regulatory authority permitting FFP for such processes?

Response: Some State IV-D dispute resolution processes would appear to be eligible for FFP at the applicable matching rate, under 45 CFR §304.20. While there are no Federal laws or regulations under Title IV-D which require States to have such processes available, States may establish administrative hearing or grievance procedures in order to address alleged deficiencies in individual cases. Under §304.20(b)(1)(ii), FFP is available for evaluating the quality, efficiency, effectiveness, and scope of services available. While this provision generally is intended to permit States to obtain Federal reimbursement for costs of reviewing and auditing their overall IV-D operations, it would also appear to allow reasonable expenditures for State processes which promote effectiveness and efficiency in providing IV-D services in individual cases.

Question #2: If costs for a State IV-D dispute resolution process are eligible for FFP, what, if any, limitations on such funding exist?

Response: Costs for a State IV-D dispute resolution process are subject to the same limitations as other eligible cost activities. Within the general bounds of Federal program rules and fiscal constraints set forth in OMB Circular A-87, 45 CFR Part 74, and 45 CFR Part 304, costs which are directly related to provision of IV-D services, including communication with custodial parents, caseworker reviews, and administrative procedures to resolve disputes would be eligible for FFP. For example, only disputes or those aspects of disputes which relate to IV-D activities or services would be eligible for reimbursement. Costs must be "reasonable" and dispute resolution

procedures "necessary" and must serve to promote efficient and effective case processing. Hearings which are unnecessarily

complex or merely serve as forums to air grievances about established procedures or Federal rules might not be considered as proper IV-D expenditures.

Question #3: If FFP is available, would it extend to reimbursing the costs of an administrative law judge acting as a hearing officer in the dispute resolution process?

Response: Within the limitations set forth above, the necessary costs properly attributable to the child support enforcement program of an administrative law judge or hearing examiner serving as a fact-finder and decision-maker may be eligible for FFP at the applicable matching rate. Formal adjudicative reviews should, however, only be required in exceptional cases after other informal administrative procedures have been exhausted. We believe that issues pertaining to distribution of support collections or case processing are generally resolved more efficiently through caseworker or supervisory reviews or other procedures established in the State to handle all initial dispute considerations, rather than using formal grievance procedures in every instance. Administrative officers conducting such reviews would, of course, be bound by applicable State and Federal rules and procedures. If these officials perform other, non-IV-D, functions, strict adherence to normal rules of cost allocation would be expected as well.

cc: ACF Regional Administrators
Regions I-IV, VI-X

OCSE-PIQ-92-02

DATE: Febrary 4, 1992

TO: Sharon Fujii
ACF Regional Administrator
Region IX

FROM: Allie Page Matthews
Deputy Director
Office of Child Support Enforcement

SUBJECT: Arizona's Questions on Federal Income Tax Refund Offset Program

This is in response to your memorandum of August 27, 1991 forwarding the letter from the Arizona State IV-D agency requesting responses to several questions concerning the Federal Income Tax Refund Offset program. The specific questions and our responses are as follows:

Question 1: After an absent parent's name is flagged on the Master File of the Internal Revenue Service (IRS) and an absent parent fails to file a return, how long is the name retained on the Master File?

Response: The IRS keeps taxpayers' names on an active file for four years if they do not file a return. This retention procedure is applicable to all taxpayers; therefore, an absent parent who has never paid taxes would not appear on such listings.

Question 2: If an absent parent has been flagged on the IRS Master File in 1988 and 1989, but not in 1990, shouldn't any refunds due for 1988 and 1989 be intercepted?

Response: A certification must be submitted each year, as long as the conditions for submittal set forth in 45 CFR 303.72(a) are satisfied. Since the certification list is deleted at IRS at the end of each year, States must submit an updated case listing annually, reflecting updated arrearage figures. When an absent parent's name is certified, any monies due by way of Federal income tax refunds to that individual are eligible for offset. For example, if an absent parent's name is submitted for processing year 1991 and, during that year, the absent parent files Federal income tax returns for tax years 1988, 1989, and 1990, any resulting refunds are eligible for offset up to the amount of the arrearage amount certified.

Question 3: It is our understanding that when a name is removed from the Master File, it is placed in a Retention File. Does the IRS match tapes submitted by OCSE against such Retention Files?

If not, what action is needed to place the absent parent's name and SSN back on the Master File?

Response: Any taxpayer's name is removed from the Master File if such taxpayer does not file an income tax return for four years. The IRS will only match cases submitted for the Federal income tax refund offset against the current Master File. For a taxpayer's name to get back on the Master File, the taxpayer must file an income tax return. Therefore, as previously stated, States must be sure to submit all eligible cases each year, because of the potential for an absent parent to file a return.

Question 4: When a case is flagged for an IRS intercept, does it remain on the Master File until the absent parent files a tax return?

Response: Cases certified to the IRS for the Federal income tax refund offset remain flagged by the IRS for intercepting refunds during the current processing year only, running January through December.

Question 5: If the IRS makes an error and refunds the money to the absent parent, who is held accountable for the money that should have gone to the custodial parent or to the State, in cases in which the overdue support is due to the State?

Response: The obligor continues to remain responsible for payment of any unpaid child support due under the order. If the case continues to meet the eligibility requirements the following tax year, the case must be submitted.

Question 6: If a State IV-D agency fails to submit a case which meets the eligibility requirements for the Federal income tax refund offset process, can such agency be held liable for reimbursing the custodial parent?

Response: There is no Federal requirement which would hold the IV-D agency responsible for paying the custodial parent the amount that could have been withheld through the Federal income tax refund offset process had the eligible case been properly submitted. If a Federal audit discloses that the State is not in substantial compliance with Federal requirements for submitting cases for the Federal income tax offset, the State may be subject to a fiscal penalty for failure to comply with Federal requirements.

Question 7: If a State IV-D agency fails to work a "No Match" or "Error" report received from IRS, which results in a refund being paid to the absent parent, is the IV-D agency liable for compensating the custodial parent for the amount that would have been intercepted?

Response: The IV-D agency is not liable for compensating the custodial parent the amount that would possibly have been offset had the submitted case not resulted in a "No Match" or "Error."

I hope that this information is helpful in responding to Arizona's inquiry. Please do not hesitate to contact us if we may be of further assistance.

cc: Regions I-VIII, X

OCSE-PIQ-92-03

February 14, 1992

FROM: Allie Page Matthews
Deputy Director
Office of Child Support Enforcement

SUBJECT: Enforcing Child Support Orders for Obligors Receiving Supplemental Security (SSI) Income

TO: Suanne Brooks
Regional Administrator
Administration for Children and Families

This is in response to your memorandum of November 4, 1991, forwarding correspondence from Stuart F. Wilson-Patton, Assistant Attorney General, Tennessee, requesting reconsideration of the policy set forth in PIQ-90-11 that the fact that SSI benefits cannot be garnished does not relieve the State from the responsibility of attempting to collect unpaid support in cases where the obligor's only source of income is from SSI. Mr. Wilson-Patton is concerned that in order to conform with PIQ-90-11, Tennessee must attempt to enforce support orders in such cases, despite the fact that Tennessee case law now prohibits such enforcement. The State's primary concern is that it not be penalized for failing to enforce support obligations owed by obligors receiving SSI benefits.

Subsequent to the issuance of PIQ-90-11, the Tennessee Supreme Court, in Tennessee Department of Human Services, ex. rel. Young v. Young, 802 S.W. 2nd 594 (Tenn. 1990), and the Eastern Section of the Tennessee Court of Appeals, in Young v. DHS ex rel. Young and State ex rel. Holder v. Holder have held that SSI benefits are not subject to garnishment orders directed to the Social Security Administration, and that the Federal protection of SSI benefits also pre-empted all State enforcement activities. In addition, these courts found that a trial court could not consider SSI benefits in determining an obligor's support obligation.

The policy established in PIQ-90-11 assumed that enforcement of a support obligation against an obligor whose sole income is from SSI benefits was possible under State law. State guidelines and enforcement procedures will generally apply to determine what means of enforcement may be appropriate under

the circumstances. Federal law neither mandates that a State "set support obligations based upon SSI" or that a State enforce existing obligations in any manner which would be inconsistent with State law. Submittal for State and Federal tax refund interception, in accordance with 45 CFR 303.6(c)(3), would be required, however, unless all enforcement remedies were barred by State law. Sanctions for failure to enforce these orders will be based upon whether the State takes "appropriate enforcement action" under Tennessee law.

OCSE-PIQ-92-04

Date: MAR 6, 1992

To: Sharon Fujii
ACF Regional Administrator
Region IX

From: Allie Page Matthews
Deputy Director
Office of Child Support Enforcement

Subject: Case Closure By Non-Custodial Parents

This is in response to Rick Spear's memorandum dated November 25, 1991 for a policy clarification regarding requests for case closure from non-AFDC recipients of IV-D services. Your questions and our responses are as follows:

Question #1: Does the use of the term "custodial parent" in 45 CFR 303.11(b)(9) or any other regulation that specifically refers to services or rights of the custodial parent actually mean any "applicant/recipient" of IV-D services?"

Response: Section 454(6) of the Act requires that child support or collection services be made available to any individual otherwise eligible for such services upon application filed by such individual with the State. OCSE regulation 45 CFR 302.33(a) provides that child support services established under a State plan shall be made available to any individual who files an application for the services with the IV-D agency. (emphasis added) The language in both the Act and the regulation allow non-custodial parents to apply for IV-D services if they meet the other specified requirements of §302.33(a)(1). In OCSE-PIQ-88-2 we clarified that "[b]ecause the statute specifically states "any individual," we cannot exclude a category of applicants." It would clearly be illogical to allow non-custodial parents to apply for IV-D services and not to allow them to request case closure. Therefore, for purposes of §303.11, if the applicant for services was not the custodial parent, States should substitute the applicant for services whenever § 303.11 refers to the custodial parent. In §303.11(b)(9) then, the State IV-D agency may close a case if requested by the individual who applied for IV-D services under §302.33, and there is no assignment to the State of medical support under 42 CFR 433.146 or of arrearages which accrued under a support order.

Question #2: If the regulations are meant to restrict non-AFDC IV-D case closure to the custodial parent, are States required to advise other applicants for IV-D services of the consequences of their application and the circumstances under which their cases could be closed?

Response: As stated in the previous response, case closure

regulations are not meant to restrict the right to request closure to "custodial parents," if the applicant for services was not the custodial parent.

Question #3: Are States required to provide applicants other than custodial parents with a notice that a custodial parent has requested that their case be closed?

Response: As previously explained, a State may close a case if the applicant for services requests closure and the requirements of 45 CFR §303.11(b)(9) are met. The applicants for IV-D services must be provided with notice of case closure pursuant to §303.11(c) for case closure factors §303.11(b)(1) through (7) and (11) and (12). There is no specific requirement that the custodial parent also must be provided with notice in such cases. Nevertheless, notice to both parents is not precluded, and may be appropriate in some circumstances. For example, if the non-custodial parent requests modification, and later requests case closure, the State may wish to contact the custodial parent to determine whether she/he would like to continue services to complete the procedure.

We are in the process of drafting an Action Transmittal specifically addressing and clarifying case closure criteria issues.

cc: ACF Regional Administrators
Regional Offices I-VIII, and X

OCSE-PIQ-92-05

DATE: April 14, 1992

TO: ACF Regional Administrators
Regions I - X

FROM: Allie Page Matthews
Deputy Director
Office of Child Support Enforcement

SUBJECT: Fifty Dollar Pass-Through Payment and Unreimbursed AFDC Assistance

We have received several inquiries regarding the $50 pass-through payment and unreimbursed AFDC assistance. Specifically, we have been asked about the use of the $50 pass-through payment to reduce unreimbursed assistance.

Federal regulations at 45 CFR 302.51(b)(1) require the State to pay to the family the first $50 of any payment received in a month on the monthly support payment for that month, and the first $50 of any payment for a prior month made by the absent parent in the month when due. In addition, the regulations at §302.51(b)(2) require any amount collected in a month which represents payment on the required support obligation for that month and is in excess of the amount paid to the family under paragraph (b)(1) above shall be retained by the State to reimburse, in whole or in part, the assistance payment for the month in which the support was collected, or the next month. The regulations further require at §302.51(b)(3) that:

> If the amount collected is in excess of the amount required to be distributed under paragraphs (b)(1) and (2) of this section, the family shall be paid such excess up to the difference between the assistance payment for the month in which the amount of the collection was used to redetermine eligibility for an assistance payment . . . and the court ordered amount for that month. . ..

Applying these rules, the sum of the (b)(1), (2) and (3) payments should equal the court ordered amount for the month.

Our policy regarding the $50 pass-through is based on the policy established in 1976 to implement a similar provision which required the State to pay to the family 40% of the first $50 which represents payment on the required support obligation. OCSE-AT-76-5, dated March 11, 1976 clearly sets forth the distribution of child support collections when the AFDC family

received 40% of the first $50 as a pass-through payment. The AT indicates on page 22, in example 20, the distribution of

payments on the current support obligation under subsections (b)(1)-(3). In this example, the assistance payment is $140 and the payment on the current month's support obligation is $175. The family is paid $20 (40% of the first $50 of the $175 current support collection) under 45 CFR 302.51(b)(1). The State retains $140 as total reimbursement of the $140 assistance payment under §302.51(b)(2). The family is paid the remaining $15 under §302.51(b)(3).

If support is paid, "in excess of the amounts required to be distributed under paragraphs (b)(1) through (3) . . . any such excess shall be retained by the State as reimbursement for past assistance payments made to the family for which the State has not been reimbursed." 45 CFR 302.51(b)(4).

OCSE-PIQ-92-06

DATE: APR 14, 1992

TO: James Travis
Acting OCSE Program Manager
Region VI

FROM: Allie Page Matthews
Deputy Director
Office of Child Support Enforcement

SUBJECT: OCSE Policy Regarding Authority of Texas to Enforce International Cases Under Title IV-D

This is in response to your memorandum of February 4 asking for our review of a request from Cecilia Burke, Director of Texas' Child Support Enforcement Division for a statement of OCSE policy regarding the treatment of incoming international cases under the IV-D program. Specifically, Ms. Burke asks whether a case with a child support obligation referred by a foreign country to Texas for enforcement services can be considered a IV-D case.

Many States, including Texas, have been able to develop reciprocal enforcement arrangements with foreign countries which provide that child support obligations of qualified foreign countries are legally entitled to enforcement services to the same extent as a support obligation arising from another State. Under such arrangements, based on comity, a State and a foreign country may separately but mutually declare or legislate their intentions to establish paternity or support and enforce each other's support obligations.

However, reciprocal arrangements between States and foreign jurisdictions are not specifically encompassed under any provision of title IV-D of the Act. Neither the Act not IV-D regulations allow the provision of IV-D services for income international cases based solely on reciprocal arrangements. Consequently, such cases may be provided services under title IV-D only upon the filing of a signed application for services in accordance with §§302.33(a)(1)(i) and 303.2(a)(2) and (3). With an application, Federal funding at the sixty six-percent matching rate would be available for the costs of providing necessary enforcement services in accordance with §304.20.

We encourage Texas and all other States to establish reciprocal arrangements with as many foreign countries as possible, and to provide support enforcement services under title IV-D when applications for services have been obtained. As the principle of reciprocity implies, when States provide aggressive enforcement services in these cases they help to ensure similar aggressive efforts by responding foreign countries.

cc: ACF Regional Administrators
Regions I - V and VII - IX

OCSE-PIQ-92-07

DATE: April 22, 1992

TO: ACF Regional Administrators
Regions I - X

FROM: Allie Page Matthews
Deputy Director
Office of Child Support Enforcement

SUBJECT: Availability of IV-D Services and the Role of the IV-D Agency

This is in response to recent questions we have received concerning the availability of IV-D services and the role of the IV-D agency.

Question 1: Who may apply for IV-D services?

Response: Federal law provides that the child support collection or paternity determination services established under the State plan shall be made available to any individual not otherwise eligible for such services upon application filed by such individual with the State. Such individuals must file a written application and may have to pay an application fee for such services of not more than $25. The State must provide all appropriate IV-D services to individuals who apply. Non-custodial, legally responsible obligors may apply for IV-D services. However, any such applicant should be apprised that the IV-D agency cannot represent the individual in an adversarial or traditional "attorney-client" capacity, but will provide services deemed to be appropriate and in accordance with Federal law and regulations. There are limitations to and consequences of receiving IV-D services. For example, custody and visitation issues cannot be handled by IV-D staff. The applicant for services will be assessed costs, if the State has elected to recover costs under 45 CFR 302.33(d). If application is made for services, all appropriate services must be provided; the applicant cannot pick and choose specific services (e.g., if an individual requests review and adjustment of an order, the modified order will also be required to include a provision for wage withholding).

Question 2: In providing IV-D services, including meeting Federal requirements for review and adjustment of support orders, who does the IV-D agency represent?

Response: Federal regulations at 45 CFR 303.20(f) specify that States must have sufficient staff including "attorneys or

prosecutors to represent the agency in court or administrative proceedings with respect to the establishment and enforcement of orders of paternity and support." The issue of legal "representation" of parties in child support proceedings is a matter to be determined by State law, regulations, or bar association requirements. There are no Federal statutory or regulatory requirements governing this matter. In the notice of proposed rulemaking published in the Federal Register on August 15, 1990 (55 FR 33414), the Federal Office of Child Support Enforcement stated at page 33418 that "the IV-D agency does not provide legal services per se. Support rights are assigned to the State in AFDC cases, and even in non-AFDC cases the traditional attorney-client relationship does not exist". States may accomplish IV-D functions under various judicial, quasi-judicial or administrative systems.

Section 466(a)(10)(A) of the Social Security Act provides that beginning October 13, 1990, if a State determines, pursuant to a plan indicating how and when child support orders are to be periodically reviewed and adjusted, that a child support order being enforced through the IV-D program should be reviewed, the State must, at the request of either parent, conduct a review and adjust the child support order, as appropriate, in accordance with the State's guidelines. Individuals whose cases do not meet the State's review criteria are certainly free to pursue adjustment of a child support order independently of the State's review and adjustment plan. After October 13, 1993, the requirements mandate triennial reviews in AFDC IV-D cases, and at the request of either parent in non-AFDC IV-D cases.

OCSE-PIQ-92-08

APR 30 1992

DATE:

TO: Ann Schreiber
ACF Regional Administrator
Region II

FROM: Allie Page Matthews
Deputy Director
Office of Child Support Enforcement

SUBJECT: Federal Requirements for Monthly Notice of Assigned Support Collected

This is in response to your memorandum of March 6, regarding requirements for monthly notice of assigned support collected which are effective on and after January 1, 1993. Because final regulations regarding this requirement have not been issued, our responses must be considered provisional and may be superseded when the final regulations are published. The specific questions and our responses are as follows:

Question 1: If a State has an automated voice response system, must it seek the Secretary's approval for a waiver of the monthly notice requirement?

Response: Yes, States which have an automated voice response system must seek a waiver from the requirement to provide monthly written notice, and provide quarterly written notices.

Question 2: Will the State have to provide quarterly (or annual) notice in addition to operating an automated voice response system?

Response: Yes, States with waivers of the monthly notice requirement will have to provide quarterly notices in addition to operating an automated voice response system. As a result, individuals entitled to notice of collections will benefit from easy access to information as well as being assured of receiving quarterly written notice of collections.

Question 3: If a State's automated voice response system is not operational on a statewide basis as of January 1, 1993, but is expected to become operational by September 1995, may it seek a waiver of the monthly notice requirement?

Response: Yes, the State could request a waiver to provide quarterly, rather than monthly, notices based, in part, upon its plan to develop an operational Statewide voice response system. However, the waiver request cannot be granted until the State has submitted additional supporting documentation indicating that it uses an automated voice response system that provides the required information. Alternatively, the State could request a waiver to provide quarterly, rather than monthly, notices based on administrative burden if the State does not have an automated system that performs child support enforcement activities consistent with §302.85, or has an automated system that is unable to generate monthly notices.

Question 4: Would the State be expected to provide quarterly notice solely for jurisdictions lacking the voice response system or in all jurisdictions under this scenario?

Response: Under any waiver, the State would be required to provide notices, at least quarterly, in all jurisdictions regardless of whether an automated voice response system is operational. Monthly notices are required in all jurisdictions unless the State is granted a waiver.

Question 5: How does the State demonstrate that providing monthly notice would impose an unreasonable administrative burden in order to be granted a waiver?

Response: Section 454(5)(A) of the Social Security Act allows waivers in order to use quarterly, rather than monthly, notices only if a State demonstrates that providing monthly notices would impose an unreasonable administrative burden. Waivers will be granted as a part of the State plan approval process. In order to obtain a waiver, a State must submit to the Regional Office a letter signed by the IV-D Director requesting a waiver to send quarterly, rather than monthly, notices, because providing monthly notice would impose an unreasonable administrative burden. The State must include supporting documentation for requesting the waiver. For example, the State could document that: (1) the State's computerized child support enforcement system is not presently capable of generating monthly notices and modifications would require extensive reprogramming, or (2) the State has an automated voice response system which provides information about specific amounts collected from each absent parent, the amount of current support collected, the amount of arrearages collected, and the amount which was paid to the family.

I hope that this information is helpful in responding to your inquiry. Please do not hesitate to contact us if we may be of further assistance.

cc: Regions I, III-X

OCSE-PIQ-92-09

APR 30 1992

TO: OCSE Regional Representatives
Regions I - X

FROM: Allie Page Matthews
Deputy Director
Office of Child Support
Enforcement

SUBJECT: Fees and Recovery of Costs -- Case Closure

This is in response to questions from several Regional Offices regarding fees prescribed in Federal regulation, recovery of costs and case closure.

Question 1: May a State which imposes fees in accordance with Federal regulations, or has elected in its IV-D State plan to recover costs from non-AFDC individuals who are receiving services under §302.33 (a)(1)(i) or (iii), close a case if a non-AFDC individual subject to a fee or cost recovery fails to pay the State the fee or the costs that have been billed to the family?

Response 1: Under §303.2 (a)(2), the IV-D agency must provide information describing available services, the individual's rights and responsibilities, and the State's fees, cost recovery, and distribution policy with each application for IV-D services, and to AFDC, Medicaid, and title IV-E foster care applicants or recipients within no more than five working days of referral to the IV-D agency.

Federal regulations at §303.2 (a)(3) require the IV-D agency to accept an application as filed on the day it and the application fee are received. Under this provision, the IV-D agency cannot open a IV-D case on behalf of a non-AFDC individual who applies for services under §302.33 (a)(1)(i) unless that individual has paid the application fee in cases where the State does not pay the fee.

The criterion at §303.11 (b)(12) provides that a non-AFDC case receiving services under §302.33(a)(1)(i) or (iii) may be closed if the IV-D agency documents the circumstances of the custodial parent's noncooperation and an action by the custodial parent is essential for the next step in providing IV-D services. When a non-AFDC individual subject to fees or cost recovery fails to pay any fee prescribed in Federal regulations or reimburse the State for costs associated with providing IV-D services, and charged to that individual, the IV-D agency may close the case under this

criterion when the payment of such fees or costs is required

under the IV-D State plan.

When case closure is appropriate, the IV-D agency must also document the circumstances of the custodial parent's noncooperation, and notify the custodial parent in writing within 60 calendar days prior to closure of the State's intent to close the case in accordance with §303.11(c). The case must be kept open if the custodial parent pays the billed costs in response to the notice.

Question 2: May a State close a case involving a non-AFDC applicant or former recipient of AFDC, title IV-E foster care, or Medicaid when the non-AFDC individual fails to sign an agreement to pay fees or costs billed to the family?

Response: The final regulations published in the Federal Register on August 4, 1989 (54 FR 32284) at page 32206 state that we received many comments by States and other organizations who requested that non-cooperation by the custodial parent (failure to attend hearings, refusal to sign forms, etc.) in non-AFDC cases be addressed.

In response to these comments, we established a new 45 CFR 303.11 (b)(12) which allows closure for non-cooperation in non-AFDC cases when the case file documents the circumstances of the noncooperation, and an action by the custodial parent is essential for the next step in providing services. Therefore, the IV-D agency may close a case because the non-AFDC individual has failed to sign an agreement to pay to the State fees or costs incurred in providing IV-D services billed to the family under the State's fee and IV-D cost recovery policy. The IV-D agency must send to the custodial parent the 60-day case closure notice in accordance with §303.11 (c). However, the custodial parent may avoid closure by responding with the necessary cooperation during the 60-day notice period.

OCSE-PIQ-92-10

Date: April 30, 1992

To: Sharon Fujii
Regional Administrator
Administration for Children and Families

From: Allie Page Matthews
Deputy Director
Office of Child Support Enforcement

Subject: Requirements for Repeating Locate Efforts Quarterly

This is in response to John Codington's memorandum of January 16, 1992 requesting a clarification of Federal policy on necessary parent locate efforts. His questions and our responses are as follows:

Question #1: Do Federal regulations require States to repeat locate efforts quarterly to an automated source which is updated less frequently than quarterly?

Response: Federal regulations at 45 CFR 303.3(b)(5) require IV-D agencies to repeat locate attempts when previous efforts have failed but adequate identifying information exists for resubmittal. Quarterly attempts may be limited to automated sources but must include accessing State employment security agency (SESA) files. If a particular automated source is updated only annually, the IV-D agency may submit the case to that source annually rather than quarterly. If an automated database is constantly updated, or updated on a quarterly basis, the case must be resubmitted for locate at least quarterly or upon receipt of new information which may aid in location, whichever is sooner.

Question #2: What sources must a State access quarterly to comply with 45 CFR 303.3(b)(5) in cases requiring repeat locate attempts?

Response: States must access SESA files quarterly. In addition, States must identify specific State and local automated sources they will access quarterly. States may choose such sources at their discretion. By "automated sources" we mean locate sources in which data is maintained in an automated fashion, regardless of the means by which it is accessed. States must access an automated source in a particular case only if adequate identifying and other information exists to meet the requirements for submittal to that source. For example, if Page 2 - Ms. Sharon Fujii

either an individual's date of birth or SSN is necessary to access automated Department of Motor Vehicle records, and neither is known in a particular case, DMV records need not be accessed

in that case.

I hope that this information is helpful in responding to California's inquiry. Please do not hesitate to contact us if we may be of further assistance.

cc: Regions I-VIII, X

OCSE-PIQ-92-11

DATE: MAY 8, 1992

TO: Frank Fajardo
Regional Administrator, ACF
Region VIII

Francis T. Ishida
Regional Administrator, HCFA
Region VIII

FROM: Allie Page Matthews
Deputy Director
Office of Child Support Enforcement

Christine Nye
Director
Medicaid Bureau

SUBJECT: FFP for Medical Support Enforcement Services

This is in response to your memorandum of November 29, 1991 requesting a joint policy statement on the availability of Federal Financial Participation (FFP) for mandatory medical support enforcement services when a State IV-D agency enters into a cooperative agreement with a title XIX Medicaid agency to perform both mandatory and optional medical support enforcement services. Specifically, you inquire which program should provide FFP for the functions mandated by 45 CFR §§303.30 and 303.31.

The regulations at §§303.30 and 303.31 specify the medical support enforcement activities which the IV-D agency must perform. The IV-D agency must render the specified services regardless of whether there is a cooperative agreement. Furthermore, child support regulations at 45 CFR §304.23(g) specify that Federal funding under the IV-D program is not available for medical support enforcement activities performed under a part 306 optional cooperative agreement with the Medicaid agency. Therefore, if a State opts to perform both mandatory and optional activities under the cooperative agreement, FFP under the IV-D program is not available for any services so provided. Medicaid regulations at 42 CFR §433.152(b)(2) specify that the title XIX agency will provide reimbursement for medical support enforcement activities performed under a cooperative agreement that are not reimbursable by OCSE. Because any activities performed under a cooperative agreement between a IV-D agency and title XIX agency are not reimbursable through the IV-D program,

the Medicaid agency must take responsibility for reimbursement of such activities in accordance with 42 CFR §433.152(b)(2). Therefore, the determining factor is whether the medical support

enforcement services are provided under a cooperative agreement. If these activities are provided under a cooperative agreement, the Medicaid agency must provide reimbursement; otherwise, the IV-D agency is responsible for payment of these services.

OCSE-PIQ-92-12

Date: MAY 21 1992

To: Hugh Galligan
ACF Regional Administrator
Region I

From: Allie Page Matthews
Deputy Director
Office of Child Support Enforcement

Subject: Issuance of $50.00 Pass-Through Payments based upon Collections from a Cash Bond

This is in response to Gene Cavallero's letter dated April 6, 1992 regarding whether the AFDC family is entitled to a $50 pass-through payment when a child support collection is obtained by receipt of a cash bond. In the inquiry, the following example was provided: A cash bond has been established which guarantees the payment of a child support obligation in the event that an absent parent fails to meet his current obligation. The absent parent owes $300 for March and pays nothing during the month. The State then issues a letter to the Bonding Agent for payment. In April, the IV-D agency receives the bond payment in addition to the absent parent's April payment.

Question: Is the family entitled to a $50 pass-through payment for March?

Response: No. In accordance with 45 CFR 302.51(b)(1), an AFDC family is only entitled to a pass-through payment in a month when a timely child support payment is collected. The timeliness of any child support payment, except in cases of wage withholding, is determined by the date of receipt or postmark, as defined in 45 CFR 302.51(a)(5). As no timely payment was made for the month of March, the family is not eligible for a March pass-through payment.

I hope that this clarification is helpful in responding to this inquiry. Please do not hesitate to contact us if we may be of further assistance.

cc: Regions II-X

OCSE-PIQ-92-13

Date: JUN 24, 1992

To: ACF Regional Administrators

From: Allie Page Matthews
Deputy Director
Office of Child Support Enforcement

Subject: Private Child Support Agency Collections in non-AFDC IV-D Cases

This addresses several recent inquiries from Regional Offices and States requesting a policy clarification as to the treatment of non-AFDC IV-D cases in which the obligee has also contracted with a private collection agency to collect child support. We want to emphasize that the choice whether to pursue support enforcement with a public or private entity rests with the custodial parent. Our concern is that she make an informed choice, with full knowledge of the fees levied by the private entity and any other pertinent considerations.

The State of Massachusetts IV-D agency has recently developed an approach to these cases and we would appreciate hearing about other States' approaches. A copy of the Massachusetts information and forms is attached.

Question #1: Do Federal regulations allow a IV-D agency to suspend enforcement activities at the request of the non-AFDC obligee?

Response: Federal regulations governing the IV-D program do not permit a IV-D agency to suspend enforcement activities at the request of the non-AFDC obligee. Under §454(6) of the Social Security Act and the implementing regulations at 45 CFR 302.33, States must provide any necessary and appropriate services in a IV-D case regardless of whether the specific services were requested by the obligee. In addition, as we stated in the preamble to the Federal Standards for Program Operations Regulation (54 FR 32284, at 32303, August 4, 1989) in regard to the Federal income tax refund offset process, "when an individual receives IV-D services, they may not dictate which services they receive." For this reason, a IV-D agency may not "suspend" its enforcement activities.

Question #2: May payments received by the IV-D agency from the obligor be forwarded to a private collection agency instead of to

the custodial parent, at such parent's request?

Response: Nothing in Federal law precludes States from sending child support payments to an entity requested by a custodial parent if authorization to do so has been obtained. Such practices would be governed by State law.

Question #3: May a IV-D agency adopt a policy of requiring the IV-D obligee to request closure of her IV-D case if and while she has entered into a contract with a private collection agency for collection of child support?

Response: No, a IV-D agency may not adopt a policy of requiring a IV-D obligee to request case closure of her IV-D case while she has a contract with a private collection agency. Such a policy or requirement would not meet one of the criteria for case closure set forth at 45 CFR 303.11(b), and is therefore an inappropriate action by the IV-D agency. Although §303.11(b)(9) permits case closure at the request of the individual receiving non-AFDC IV-D services, such requests must be voluntary on such individual's part. Furthermore, as we stated supra, a recipient of IV-D services cannot dictate which services he or she receives. Rather, all appropriate services must be provided.

Similarly, it is OCSE's position that it would be inappropriate for a IV-D agency to close a case in an analogous situation, if the custodial parent hired a private attorney, because that too would not meet one of the case closure criteria set forth in §303.11. There are no case closure criteria which permit the unilateral closure of a IV-D case by the IV-D agency because the IV-D recipient has retained private counsel. Therefore, IV-D services must be provided regardless of whether a recipient of IV-D services has retained private counsel, unless the case meets at least one of the case closure criteria enumerated in 45 CFR 303.11(b). To suspend case activity because of retention of private counsel to handle certain actions would deny the applicant such services as Federal and State income tax refund offsets, full collection services by the Internal Revenue Service, and use of the Federal courts, which are available only to recipients of IV-D services. However, requiring that recipients of IV-D services notify the IV-D agency of the involvement of private counsel is appropriate, in order to prevent duplication of effort and to maximize the effectiveness of actions taken through coordinated efforts.

Question #4: Must a State comply with the request of a non-AFDC recipient of IV-D services to furnish extensive case information to a private collection agency that has been retained by the non-AFDC recipient of IV-D services?

Response: Federal regulations at 45 CFR §303.21(a) specify the limited circumstances under which information concerning applicants or recipients of support enforcement services may be

used or disclosed. Such disclosure is limited to purposes directly connected with: 1) the administration of the plan or program approved under parts A, B, C, or D of title IV or under titles II, X, XIV, XVI, XIX or XX or the supplemental security income program established under title XVI; 2) any investigations, prosecution or criminal or civil proceeding conducted in connection with the administration of any such plan or program; and 3) the administration of any other Federal or Federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need. Release of information to a private collection agency, or to a private attorney, would not appear to fall within any one of the three enumerated purposes of §303.21(a) and, in addition, may violate other safeguarding rules such as those under the Internal Revenue Code at 26 U.S.C. 6103(p)(4) if tax information is disclosed.

Attachment

OCSE-PIQ-92-14

DATE: JUN 30 1992

TO: Leon McCowan
ACF Regional Administrator
Region VI

FROM: Allie Page Matthews
Deputy Director
Office Of Child Support Enforcement

SUBJECT: Texas Request for Information Regarding Federal Commercial Driver's License Information

This is in response to your memorandum of April 23, 1992 forwarding the letter from the Texas IV-D agency requesting information about access to commercial drivers license information for parent location purposes. In their inquiry, Texas indicated that responsibility for issuing commercial drivers licenses had been recently transferred from the States to the Federal government. They requested information on accessing the subsequent Federal database of information concerning the licensing of commercial drivers. Our response is as follows:

Licensing of commercial drivers continues to be the responsibility of individual State Departments of Motor Vehicles. However, in section 12007 of Public Law 99-570, the Commercial Motor Vehicle Safety Act of 1986, Congress mandated the creation of the Commercial Driver License Information System (CDLIS). This system is designed to support the issuance of commercial driver licenses by the States in order to eliminate fraudulent activities by commercial drivers. It is not a licensing authority, rather it is a national network linking a user to other State licensing databases. The CDLIS system is one of the services offered by AAMVAnet, a subsidiary of the American Association of Motor Vehicle Administrators (AAMVA), who provided us with some of the following information about the network.

Currently, all State Departments of Motor Vehicles are on the AAMVAnet system and have access to the Commercial Driver License Information System. The network of commercial licensing information consists of two data components. The first component is a central file containing a short record for each commercial

driver license issued. This record contains the state of issuance and driver license number, driver's name and date of birth, social security number, eye and hair color, weight, and height. The second component is the State databases containing the more detailed information regarding a driver's status and driving history.

The central file and State databases are linked via AAMVAnet to create a distributed database, collectively known as CDLIS. When a driver applies for a commercial license the State checks the central file to see if the applicant has already been issued a commercial driver's license. Upon licensing, the State enters the driver's information into the central data base to ensure other states are aware that the driver has been issued a license. When a commercial driver moves to another State, the new State changes the central file to indicate that they now are the driver's state of record. Any existing history information in the previous State is transferred electronically to the new State to ensure complete and accurate retention of the driver's record. The social security number of the driver is the key to accessing a particular record.

Interested State child support agencies should contact their State Department of Motor Vehicles for more information on using the Commercial Driver License Information System to access commercial driver license information for location of absent parents. We will continue to explore this locate information source and will provide additional information as it becomes available.

cc: Regional Administrators
Regions I-V, VII-X

OCSE-PIQ-92-15

AUG 10 1992

TO: ACF Regional Administrators
Regions I - X

FROM: Allie Page Matthews
Deputy Director
Office of Child Support Enforcement

SUBJECT: Expedited Processes

Attached is our response to a memorandum from the San Francisco Regional Office requesting our assistance in responding to questions from California regarding the exclusion of cases from the expedited processes timeframes. In response to the questions raised, we address the treatment of reimbursement only cases, contempt cases, bench warrants, and cases involving the Soldiers' and Sailors' Civil Relief Act of 1940.

In addition, questions have been raised regarding whether cases involving bankruptcy filings are subject to expedited processes timeframes. With regard to these cases, States should file a motion for relief from the automatic stay in bankruptcy proceedings when a support obligation needs to be established or enforced. When the process to establish or enforce a support obligation is stayed, and relief is granted, or the motion for relief from the stay is denied, the State should try to obtain disposition of the matter within the expedited processes timeframes if time remains once the delay or period of stay ends. However, when the State cannot resolve the matter by the end of the one year expedited processes timeframe because of a delay, or denial of relief from the stay, under the bankruptcy proceedings, the case may be excluded from the cases subject to the expedited processes timeframes. The State must document the reason(s) for excluding each case. Alternatively, the State may deduct the time the case was "placed on hold" under the bankruptcy proceedings from the computation for compliance with expedited processes timeframes.

Attachment

DATE: DEC 11, 1991

TO: Sharon M. Fujii
OCSE Regional Representative
Region IX

FROM: Allie Page Matthews (signed by Allie Matthews)
Deputy Director
Office of Child Support Enforcement

SUBJECT: Expedited Processes in California

This is in response to your memorandum of June 13 in which you request our assistance in responding to questions from California regarding the exclusion of cases from the expedited processes timeframes when jurisdictions are operating under an exemption from expedited processes.

In a letter dated May 31, 1991, California indicates that temporary support orders or another disposition is inappropriate or not possible for certain cases within the expedited processes timeframes because of due process considerations. Specifically, the State describes the following types of cases: reimbursement only cases, contempt cases for criminal non-payment of support, cases involving a bench warrant, and cases in which the Soldiers and Sailors Civil Relief Act of 1940 is invoked.

With regard to the reimbursement only cases, we agree with your position that the establishment of an order for support in such cases should not take any longer than the establishment of any other support order in which the support guidelines are the basis for the amount of the order. (Please note that effective January 1, 1992, California's practice of using support guidelines to establish judgments in reimbursement only cases is set forth in section 11350 (c) of the State's Welfare and Institutions Code.) In response to the specific situations raised by California, when the absent parent contests the amount of the order, or alleges fraud on the custodial parent's part, the State is subject to the expedited processes timeframes. However, when the case against the non-custodial parent is dismissed, case disposition has taken place for purposes of the expedited processes timeframes as of the date the action is dismissed.

In criminal contempt cases, when a previously filed civil action against the non custodial parent is dismissed, or the criminal action is dismissed, case disposition has taken place for purposes of the expedited processes timeframes as of the date the action is dismissed.

With regard to California's concern about bench warrants, when the court issues a bench warrant because the non-custodial parent did not obey an order to appear in court in connection with failure to pay court ordered child support, the case may be considered disposed of for purposes of expedited processes

timeframes as of the date of issuance of the order to arrest the non-custodial parent. However, if the bench warrant is successfully served on the non-custodial parent, the expedited processes timeframes would begin as of the date of successful service.

When a delay or stay in a court civil support proceeding occurs in accordance with the provisions of the Soldiers and Sailors Civil Relief Act of 1940, the court should attempt to obtain disposition of the matter within the expedited processes timeframes if time remains once the delay or period of stay ends. However, when the court cannot resolve the matter by the end of the one year expedited processes timeframe because of a delay or stay in accordance with the Soldiers and Sailors Civil Relief Act of 1940, the case may be excluded from the cases subject to the expedited processes timeframes. The State must document the reason(s) for excluding each case. Alternatively, the State may deduct the time the case was "placed on hold" by Soldiers and Sailors Civil Relief Act from the computation for compliance with expedited process timeframes.

OCSE-PIQ-92-16

Date: August 21, 1992

To: Stephen S. Henigson
Regional Administrator
Region X, ACF

From: Allie Page Matthews
Deputy Director
Office of Child Support Enforcement

Subject: Effective Date of a Modified Support Order

This is in response to your April 24 letter forwarding Alaska's question seeking a policy interpretation concerning the date upon which a modified child support order may be made effective. Alaska's inquiry and our response is as follows:

Question: In determining the effective date of a modified child support order, may either the date of (a) the advance notice of a review, required by 42 USC 666(a)(10)(C)(i), or (b) the notice of proposed adjustment, required by 42 USC 666(a)(10)(C)(iii), be considered the date of notice of a petition for modification, as specified by 42 USC 666(a)(9), when such notices precede the filing with the court or administrative authority of a motion or petition to modify a support order?

Response: Nothing in the Federal statutory requirements for review and adjustment of child support orders in IV-D cases [42 USC 666(a)(10)] alters the clear statutory prohibition against modifying any child support order for a period prior to notifying the non-moving party of a pending petition seeking a change in the child support award amount. This requirement applies to both actions seeking an increase in the amount of child support and those seeking a decrease. It is the responsibility of parties to a child support order to take action promptly to seek modification of a support obligation based on a change in circumstances and file the appropriate pleadings with the court or administrative authority.

However, if under State law, either of the 466(a)(10)(C) pre-review/post-review notices trigger the legal process (judicial or administrative) for modification of the child support award amount, such notice may be considered the "date of notice of a

petition for modification" for the purpose of determining the date from which a modification of a child support order may be made effective.

Under the exception to the prohibition of retroactive modification under Section 466(a)(9) of the Act, State procedures may permit modification with respect to any period during which there is pending a petition for modification, but only from the

date that notice of such petition has been given directly or to the agent of the other party. Federal regulations at 45 CFR §303.106 mirror this statutory language.

Under these provisions, the "date of notice" or "date notice is given" should be interpreted by the State in the same way as it is generally applied in the context of other civil litigation within the State. State law regarding the establishment of the date of notice that a petition has been filed dictates when the modification may be effective. The date of notice may be the same date on which the petition is filed if "notice is given" on the same date by publication or other means and personal service is not required under State law.

As stated in the preamble to the final rule governing the prohibition of retroactive modification of child support orders (54 FR 15757 at 157673, OCSE-AT-89-06), although the effective date of any modification is tied to the date notice of the petition is given, notice through the mail or other means may be sufficient so long as the State has acquired personal jurisdiction over the other party under State law. Therefore, if giving of the post-review notice of a proposed adjustment occurs concurrently with or serves itself as the giving of notice of a petition for modification, the date of such notice may be made the effective date of a prospective modification. Similarly, if State law permits the entry of an adjusted order based upon a consent agreement or stipulation of both parties without the necessity of filing a petition in an existent case, the court could consider the date it approves the stipulation as the date from which the changed amount of child support runs.

I hope this information is helpful in responding to Alaska's inquiry.

cc: ACF Regional Administrators
Regions I - IX

OCSE-PIQ-92-17

Date: SEP 4 1992

To: ACF Regional Administrators

From: Allie Page Matthews
Deputy Director
Office of Child Support Enforcement

Subject: Fees and Cost Recovery in Non-AFDC IV-D Cases

This is in response to a recent inquiry regarding charging fees and recovering costs in non-AFDC IV-D cases. The question presented was whether Federal law and regulations allow a State to recover some of the costs of providing IV-D services from the custodial parent, and other costs from the non-custodial parent; or, whether States electing to recover costs are limited to choosing between the parties.

Section 454(6)(E) of the Social Security Act (the Act) provides that States may recover the costs in excess of any fees imposed from either the child support obligor, or, at State option, from the child support obligee, but only if States have a procedure where all persons in a State having authority to order child or spousal support are informed that the costs are to be collected from the individual to whom such services were made available. Federal regulations at 45 CFR 302.33(d) mirror this statutory language concerning from whom costs may be recovered. It should be emphasized that States need not recover all costs (e.g., filing fees, service of process fees, witness fees) incurred, in excess of any fees incurred to cover administrative costs.

Because the statutory and the regulatory language do not preclude States from recovering certain costs from the custodial parent and others from the non-custodial parent, States may choose to do so if the other requirements of 45 CFR 302.33(d) are met. Under that subsection, States are permitted to recover either excess actual costs or standardized costs. A State that recovers standardized costs must develop a written methodology, available upon request, to determine standardized costs which are as close to actual costs as possible. The IV-D agency may not treat any amount collected from the individual as a recovery of costs except amounts which exceed the current support owed by the individual under the obligation. If a State elects to recover costs, the IV-D agency may attempt to seek reimbursement

from the individual who owes a support obligation for any costs paid by the individual who is receiving IV-D services and reimburse the individual who is receiving IV-D services. When a State elects to recover costs, it must notify the individual from whom costs will be recovered that such recovery will be made. In an interstate case, the IV-D agency where the case originated must notify the individual receiving IV-D services of the States

that recover costs. The IV-D agency must also notify the IV-D agencies in all other States if it recovers costs from the individual receiving IV-D services.

It should be noted that if a State wishes to recover costs from both parents, it must submit revised State plan pages 2.5-2 and 2.5-3 and check both boxes in paragraph 5 for cost recovery to indicate that certain costs are recovered from the custodial parent and others from the noncustodial parent.

OCSE-PIQ-92-18

Date: NOV 23, 1992

To: ACF Regional Administrators

From: Allie Page Matthews
Deputy Director
Office of Child Support Enforcement

Subject: Use of State Long-Arm Statutes and Responsibilities for Handling Interstate Referrals

This addresses several recent inquiries from Regional Offices and States regarding long-arm jurisdiction. The issues and our responses are as follows:

Question #1: What are Federal requirements regarding State use of long-arm jurisdiction in establishing paternity and establishing and enforcing child support orders?

Response: Federal regulations at 45 CFR 303.7(b)(1) require that if a State has a long-arm statute which allows a paternity establishment action to be filed locally against a non-resident of the State, the State must use that authority to establish paternity whenever appropriate. In the Response to Comments section of final regulations on interstate case processing published February 22, 1988 at 53 FR 5251 (OCSE AT-88-2), OCSE identified several advantages to working a case locally by using long-arm jurisdiction. The Response to Comments also noted that State and local IV-D agencies often rely on URESA in many situations where a superior remedy is available under their existing long-arm authority. URESA is often chosen because program staff and attorneys are unaware of the existence of this alternative. The regulation requiring use of long-arm in paternity cases where appropriate was designed to remedy this situation by ensuring that States examined all available options in each case and chose the most effective one. Although some additional work may be required to establish the basis for long-arm jurisdiction in a case, the advantages of proceeding in the State where the mother and child reside far outweigh the disadvantages inherent in many URESA paternity actions.

As stated in the Response to Comments at 53 FR 5252, OCSE also encourages States to use long-arm statutes in non-paternity cases, such as support order establishment, where the result will be more effectively obtained.

Question #2: If the State providing IV-D services chooses to first attempt all appropriate local, in-state remedies against a non-resident, will the State be penalized for not referring the

case to another jurisdiction within the 20-calendar-day timeframe specified in 45 CFR 303.7(b)(2)?

Response: The 20-calendar-day timeframe only applies to cases where an interstate referral is made. The timeframe does not apply to cases worked locally using long-arm jurisdiction.

Once an alleged or absent parent has been located in another State, IV-D caseworkers should clearly document in the case record whether the case will be worked locally using long-arm jurisdiction, or whether an interstate referral will be made. This documentation will allow OCSE auditors to determine what action was taken in the case.

If a State first attempts long-arm action but is unable to obtain jurisdiction, the State should then make an interstate referral to the State where the alleged or absent parent resides. In a case where a State first attempts to use long-arm jurisdiction but later determines that referral of the case to another State is necessary, the 20-day timeframe applies, and will run from the date that referral to another State is needed and if appropriate, receipt of any necessary information needed to process the case. The date that referral to another State is needed may occur, for example, when foreign process is returned unserved or when jurisdiction is challenged and the court dismisses the long-arm action.

Please note that final regulations published July 10, 1992 (OCSE-AT-92-02) revised 45 CFR 303.7(b)(2) to tie the 20-calendar-day timeframe for referral of an interstate case to the receipt of any information necessary to process the case. As a result, 45 CFR 303.7(b)(2) now requires that, within 20 calendar days of determining that the absent parent is in another State, and, if appropriate, receipt of any necessary information needed to process the case, the initiating IV-D agency must refer any interstate IV-D case to the responding State's central registry.

Question #3: Which State has responsibility for determining whether use of long-arm jurisdiction is appropriate in a particular case?

Response: The State working the case decides whether use of its long-arm statute is appropriate in a case. However, we stress that a State with a long-arm statute must, under Federal regulations, use long-arm jurisdiction whenever appropriate in paternity cases.

In determining if long-arm jurisdiction is appropriate in a particular case, a State may consider such factors as: (1) whether the quantity, nature, and quality of the alleged father's contacts with the State are sufficient under the State's long-arm statute to invoke personal jurisdiction, and (2) whether the convenience to the parties involved, including the availability

of witnesses, warrant maintaining the action in-state. As indicated in the preamble to the final regulations governing interstate case processing (53 FR 5251-5252), we recognize that there may be situations under which use of a long-arm statute to establish paternity would not be appropriate, such as if the basis for jurisdiction is questionable or witnesses are available in the responding State.

Question # 4: Does the responding State in an interstate case have the right to refuse an interstate referral when paternity is at issue and the initiating State has a long-arm statute available?

Response: No, the responding State may not refuse such a case. A responding State must accept and work the incoming interstate case in accordance with 45 CFR 303.7(c) without questioning the initiating State's decision not to use long-arm jurisdiction.

Question # 5: In cases in which long-arm jurisdiction is inappropriate, should an initiating State route referrals of interstate cases through the Federal OCSE Regional Office to force the responding State to take action?

Response: No, initiating States should not route such cases through the Regional Office. Instead, the initiating State may wish to alert the Regional Office if particular States are refusing to handle incoming interstate cases, so that Regional staff can assist in resolving such issues.

Question # 6: In a case in which a State uses its long-arm statute, which State is responsible for paying the service of process on the alleged or absent parent?

Response: In OCSE-PIQ-88-14, we addressed this question. We stated that the responding State, under 45 CFR 303.7(d), was responsible for paying service of process costs. As a result of our analyses of the long-arm jurisdiction inquiries, we have reevaluated our position. The response to question #1 in OCSE-PIQ-88-14 only applies to cases where an interstate referral is made.

In using its long-arm statute, a State IV-D agency does not have to make an interstate referral in order to serve process. A IV-D

agency may accomplish service of process without an interstate referral by using personal service, certified mail, or other procedures allowed under State law and regulations to serve process. For example, a IV-D agency may directly contact the sheriff, or other appropriate official, in the absent or alleged parent's county of residence to request personal service of

process. In efforts to accomplish long-arm service, a State may contact the IV-D agency in another State for information and assistance. Because this type of informal request is not an official interstate referral, an interstate transmittal form should not be used. We encourage IV-D agencies, upon receiving such requests, to provide information and assistance to other States regarding service of process. OCSE's updated "State at a Glance" directory will contain a new section that describes each State's willingness to help other States using long-arm statutes in paternity cases with arranging for service of process.

In such cases, where a referral is not made, the State using long-arm jurisdiction is responsible for paying the costs of service of process. Because no interstate referral has been made, there is no "responding State" and 45 CFR 303.7(d), which requires the responding State to pay most costs in interstate cases, does not apply.

However, in cases in which long-arm service fails and interstate case action is necessary, the State must formally refer the case to another State for action (i.e., through the central registry using standard interstate forms). In such cases, 45 CFR 303.7(d) applies, and the responding State is responsible for paying service of process costs.

Date: NOV 20, 1992

TO: Suanne Brooks
Regional Administrator
Region IV, ACF

From: Allie Page Matthews
Deputy Director
Office of Child Support Enforcement

Subject: Use of State Long-Arm Statutes and Responsibilities for Handling Interstate Referrals

Attached is a PIQ which responds to your September 9, 1992 memorandum regarding questions posed by the Georgia Office of Child Support Recovery. The issues raised in Georgia's inquiry, along with additional issues raised by other States, are discussed in the PIQ.

I hope this information is useful in responding to Georgia's letter.

Attachment

OCSE-PIQ-92-19

DATE: December 10, 1992

TO: Frank Fajardo
ACF Regional Administrator
Region VIII

FROM: Allie Page Matthews
Deputy Director
Office of Child Support Enforcement

SUBJECT: Continuation of IV-D Services to Former Non-AFDC Medicaid Recipients

This is in response to your October 13, 1992, memorandum requesting policy clarifications for questions raised at the September, 1992 Region VIII IV-D Directors' conference. This memorandum will address issues concerning medical support enforcement and continuation of IV-D services to former AFDC, Title IV-E foster care, and non-AFDC Medicaid recipients.

Federal regulations, at 45 CFR 302.33(a)(4), require that "whenever a family is no longer eligible for assistance under the State's AFDC, IV-E foster care, and Medicaid programs, the IV-D agency must notify the family, within five working days of the notification of ineligibility, that IV-D services will be continued unless the IV-D agency is notified to the contrary by the family. The notice must inform the family of the consequences of continuing to receive IV-D services, including the available services and the State's fees, cost recovery and distribution policies." Your specific questions and our responses follow.

Question 1: Are IV-D agencies required to send notices of continuation of IV-D services to former non-AFDC Medicaid recipients who had declined IV-D services not related to medical support enforcement while receiving Medicaid?

Response: Yes. The notice of continuation of IV-D services required under 45 CFR 302.33(a)(4) must be sent to former non-AFDC Medicaid recipients who had declined IV-D services not related to medical support enforcement while receiving Medicaid. Circumstances may have changed for the family since they earlier declined IV-D services not related to medical support enforcement, and they may now realize the importance of receiving the full range of IV-D services.

Question 2: In continuing to provide IV-D services to former non-AFDC Medicaid recipients who previously declined services not related to medical support enforcement, what IV-D services must be continued?

Response: In continuing to provide IV-D services to former non-AFDC Medicaid recipients, the IV-D agency must provide all appropriate IV-D services, not just those related to medical support enforcement. Notices of continuation of IV-D services should inform former AFDC, Title IV-E foster care, and non-AFDC Medicaid recipients of the consequences of continuing to receive IV-D services, including that continuation of services includes the full range of appropriate IV-D services, both non-medical support enforcement and medical support enforcement.

Question 3: Are IV-D agencies required to obtain written consent for medical support enforcement services from former AFDC, Title IV-E foster care, and non-AFDC Medicaid recipients, in the same manner as currently required for applicants for IV-D services?

Response: No, written consent for medical support enforcement services is not required in continuation cases. However, the family does have the option of receiving only those IV-D services which are not related to medical support enforcement. The notice of continuation of services must inform the former AFDC, Title IV-E foster care, and non-AFDC Medicaid recipient that IV-D services will be continued unless notified to the contrary by the family. Unless the family notifies the IV-D agency that IV-D services are no longer desired, the IV-D agency must continue to provide all appropriate IV-D services, including medical support enforcement services.

Question 4: Must IV-D agencies accept non-AFDC applications for IV-D services for medical support enforcement services only?

Response: No, applicants for IV-D services may not request only medical support enforcement services, if other services are appropriate.

Question 5: May a State require written consent for medical support enforcement services from former AFDC recipients and former non-AFDC Medicaid recipients?

Response: No. As stated above, the notice of continuation of IV-D services must notify former recipients of AFDC, Title IV-E foster care, and non-AFDC Medicaid services that all appropriate IV-D services, including medical support enforcement, will be continued unless the IV-D agency is notified to the contrary by the family.

cc: Regional Administrators
Regions I-VII, IX-X

OCSE-PIQ-93-01

Date: JAN 26, 1993

To: Frank Fajardo
Regional Administrator
Region VIII

From: Robert Harris
Associate Deputy Director
Office of Child Support Enforcement

Subject: Wage Withholding and Fees & Cost Recovery in Interstate Cases

This is in response to your memorandum of October 13 seeking clarification concerning several interstate wage withholding and fees/cost recovery policy issues. The questions and our responses are as follows:

Wage Withholding

Question #1: In interstate wage withholding cases, are IV-D agencies permitted to use instate remedies before deciding to refer a case for interstate action, which would trigger the 20-calendar-day timeframe for such referral specified in 45 CFR 303.100(h)(3)? In such situations, will IV-D agencies contravene Federal requirements if they fail to refer the case to another State within the 20-day timeframe?

Response: IV-D agencies may use local enforcement efforts, including wage withholding, against a non-resident obligor, where appropriate. OCSE-PIQ-92-18 specified that the 20-calendar-day timeframe in 45 CFR 303.7(b)(2) for referring interstate cases to another jurisdiction only applies to cases where an interstate referral is made and does not apply to cases worked locally using long-arm jurisdiction.

Similarly, the 20-calendar-day timeframe in 45 CFR 303.100(h)(3) only applies to wage withholding cases where an interstate referral is made. If the IV-D agency can work a case locally, without an interstate referral, then the 20-day timeframe does not apply.

The Response to Comments section of final regulations on wage withholding published May 9, 1985 addressed the issue of when it is appropriate for a IV-D agency to locally implement wage

withholding against a non-resident obligor. We stated that this is a matter of State law and that a State may use its long-arm statute for wage withholding if the State's statute allows the State to acquire long-arm jurisdiction over an employer in another State. Otherwise, the State must contact the IV-D agency in the State where the absent parent is employed to initiate withholding. See 50 F.R. 19608, 19627.

While the 20-day interstate referral timeframe of 45 CFR 303.100(h)(3) does not apply in cases in which a State implements wage withholding locally, the State must meet all other wage withholding timeframes in such cases, including the 15-calendar-day timeframes for sending notice to the obligor (in initiated/triggered withholding cases) under 45 CFR 303.100(c)(2) and the employer under 45 CFR 303.100(f)(2) and (3). IV-D caseworkers should clearly document in the case record whether the case will be worked locally using long-arm jurisdiction or whether an interstate referral will be made. This documentation will allow OCSE auditors to determine whether appropriate and applicable timeframes have been met in a case.

Question #2a: Is it permissible for a State to work directly with an obligor in another State for the purpose of arranging a direct, voluntary wage deduction by his/her employer in another State, without formally referring the case for interstate wage withholding?

Response: A State may work with an obligor, regardless of his place of residence, to facilitate a wage deduction. However, the IV-D agency must implement immediate withholding in all cases which meet the criteria under 45 CFR 303.100(b)(1) and initiated/triggered withholding in all cases which meet the criteria under 45 CFR 303.100(c)(1). If interstate withholding is required, the provisions of 45 CFR 303.100(h) would apply.

States pursuing voluntary wage withholding arrangements should consider the potential drawbacks to such an approach. For example, voluntary wage deductions: (1) may not be enforceable in the event of a lapse in payments or decision by the obligor or employer to alter or stop the arrangement; (2) may require constant monitoring to ensure that the amounts are regularly received; and (3) may not impose any timeframes upon the employer or income source to submit withheld amounts to the appropriate recipient, or impose liability for failure to withhold.

As Federal review and adjustment requirements are implemented, immediate withholding, which applies to new and modified orders established on or after November 1, 1990 in IV-D cases, will become more prevalent and routine, thereby diminishing the need for other remedies such as voluntary wage deductions.

Question #2b: Would it be permissible under Federal regulations for the obligor to arrange a voluntary wage deduction with his/her employer to be paid directly to the initiating State?

Response: An obligor may make arrangements with his/her employer for a voluntary wage deduction to be paid to another State. However, such action by the obligor does not relieve the IV-D agency working the case from meeting all Federal requirements. The IV-D agency working an interstate or intrastate case must impose withholding in accordance with all 45 CFR 303.100 requirements, even if a preexistent voluntary wage deduction is in place, if: (1) arrearages accrue in an amount equal to the support payable for one month, or (2) the custodial parent requests withholding which the State approves under its procedures and standards, or (3) the absent parent requests withholding, or (4) a new or modified order requiring immediate withholding is established. Such mandatory withholding requirements would supersede the voluntary arrangement. In an interstate case, the withholding notice or order could be processed locally by long-arm jurisdiction or through interstate channels, depending upon the case circumstances, State law, and location of and jurisdiction over the income source.

Question #2c: May an initiating State negotiate a voluntary wage deduction with an out-of-State obligor where there is an existing interstate case, if the initiating State notifies the responding State of its activities?

Response: As we stated in OCSE-PIQ-89-4, in working an interstate case, the responding jurisdiction has ultimate authority for decisions regarding actions taken in the responding State. Therefore, if an initiating State wants to negotiate a direct, voluntary wage deduction with an out-of-State obligor after an interstate referral has been made, it should consult with the responding State so as not to disrupt case processing actions by the responding State. If the initiating State proceeds to negotiate a voluntary wage deduction, it must, under 45 CFR 303.7(b)(5), notify the IV-D agency in the responding State within 10 working days of receipt of new information by submitting an updated form. In addition, the responding State would still be responsible for working the case referred, including meeting all case processing timeframes.

We discourage initiating States from negotiating directly with obligors in other States once an interstate referral has been made. If both initiating and responding States are working a case, duplication of effort and overpayment by the obligor could result.

Question #2d: Can a State pursue these voluntary remedies to conclusion before being required to refer the case to a

responding State within the 20-calendar-day timeframe for interstate referral?

Response: A State's attempts to negotiate a voluntary wage deduction are not related to the 20-calendar-day timeframe specified in 45 CFR 303.100(h)(3) for referring an interstate wage withholding case to another State. The 20-day timeframe covers cases where mandatory withholding (either immediate or initiated/triggered) is necessary. As mentioned above, a State must implement mandatory withholding in such cases and therefore cannot seek a voluntary wage deduction in lieu of mandatory remedies such as immediate or initiated/triggered withholding.

Question #3: Will States be subject to audit deficiencies in cases where employers fail to meet the 10-working-day timeframe for forwarding withheld earnings in 45 CFR 303.100(f)(1)(ii)?

Response: There are no audit criteria relating specifically to noncompliance due to employer failure to remit payments within 10 working days. A State, however, would be subject to an audit finding of noncompliance and potential penalty in cases where the State fails to include in its notice to employers that payments must be forwarded within 10 working days, as required in 45 CFR 303.100(f)(1)(ii). Regulations at 45 CFR 303.100(h)(2) require that State law must require employers to comply with a withholding notice issued by the State.

Fees and Cost Recovery

Question #4: Are States which impose fees or recover costs required to apply these policies equally to interstate as well as intrastate cases?

Response: As specified in the Response to Comments section of final regulations on cost recovery published in the Federal Register on September 19, 1984 (49 FR 36769, OCSE-AT-84-10), a State that elects to recover costs must attempt to recover costs in all cases filed in the State or referred from another State either from each absent parent obligated to pay support or from each non-AFDC individual receiving IV-D services. Similarly, the genetic testing and Federal Parent Locator Service fees which may be imposed, and other fees imposed under State law, including fees which result in recovery of costs tied to administrative costs specified under the IV-D State plan, apply to all IV-D cases filed in the State or referred from another State. Therefore, States must apply cost recovery and fee policies uniformly in both interstate and intrastate cases.

In accordance with 45 CFR 302.33(d)(6), a responding IV-D agency has a duty to notify the IV-D agencies in all other States if it

recovers costs from the individual receiving IV-D services.

Question #5: When a responding State imposes fees/recovery of cost policies in an interstate case and deducts the charges before forwarding collections to the initiating State, how is the initiating State expected to accurately account for these collections? How can the initiating State reconcile the amount collected from the obligor with the amount received from the responding State?

Response: Under its cost recovery policy, a responding State in an interstate case can impose a "fee" tied to administrative costs (a check processing fee for instance) on non-AFDC IV-D cases. For example, if a responding State collects $200 in child support and deducts a $3.00 fee, it would forward $197 to the initiating State.

Under 45 CFR 303.7(d)(5), a responding IV-D agency must identify any fees or costs deducted from support payments when forwarding payments to the initiating IV-D agency. Therefore, the responding IV-D agency must inform the initiating IV-D agency of the amount of support collected ($200 in the example), the amount being forwarded ($197), and the amount of fees/cost recovery deducted ($3). Based on this information, the initiating State should be able to credit the obligor's account for the amount collected ($200) and record and distribute the amount received ($197).

cc: ACF Regional Administrators
Regions I - VII, IX, X

Child Support Program Managers
Regions I - X

OCSE-PIQ-93-02

April 19, 1993
Case Closure in Interstate Cases

DATE: April 19, 1993

TO: Barry L. Morrisroe
Child Support Program Manager
Region X

FROM: Robert C. Harris
Acting Deputy Director
OCSE

SUBJECT: Case Closure in Interstate Cases

This is in response to your memorandum dated March 1, 1993, regarding IV-D case closure in interstate IV-D cases. Washington State inquired whether the responding State may return a IV-D case to the initiating State if the noncustodial parent is determined to be in another State, even if the responding State is already involved in an enforcement action. Washington State's specific questions and our responses are as follows:

Question 1: Oregon is the initiating State. The Washington State IV-D agency is working the case as the responding State. The noncustodial parent moves back to Oregon, but continues to work in Washington State. The Washington State IV-D agency has a wage withholding action in place or is preparing to send one to the noncustodial parent's employer.

Response: Federal regulations at 45 CFR 303.7(c)(6) require that, within ten days of locating the noncustodial parent in another State, the responding State must either return the form and documentation, including the new location of the noncustodial parent, to the initiating State, or, if the initiating State so directs, forward the form and documentation to the central registry in the State where the noncustodial parent has been located. Further, the responding State must notify its central registry regarding where the case has been sent.

The purpose of 45 CFR 303.7(c)(6) is to provide a procedure for the responding State to follow when initiation, or continuation, of IV-D services in the responding State is no longer feasible when noncustodial parents depart from the State. The procedures for returning the case to the initiating State, or forwarding the case to a new responding State, would not apply if the responding State IV-D agency believes that they can continue to provide IV-D services and that case closure/transfer would not be in the best interests of the child.

Under the facts described, Washington State should continue to

provide IV-D enforcement services in the situation described, when continuation is feasible and in best interest of the child.

Question 2: Idaho is the initiating State. Washington State is the responding State. The custodial parent receives AFDC in Idaho. The alleged father has recently moved back to Idaho from Washington State. A Washington State prosecuting attorney has served the alleged father a Summons and Petition for paternity. Blood tests did not exclude the alleged father. The prosecuting attorney expects to obtain a paternity order in the near future.

Response: Under the circumstances presented, the Washington State IV-D agency should continue with the paternity establishment action in process, rather than dismissing the proceeding and transferring the case to Idaho.

Washington has obviously obtained jurisdiction and substantially completed the necessary action. Dismissal of the action at this stage would not advance the best interests of the child.

OCSE-PIQ-93-03

DATE: July 12 1993

TO: ACF Regional Administrators

FROM: Robert C. Harris
Acting Deputy Director
Office of Child Support Enforcement

SUBJECT: Availability of FFP for District Attorneys

This is in response to a recent inquiry seeking clarification on the availability of Federal financial participation (FFP) for District Attorneys. The question was whether FFP is available for the salary and benefits of a District Attorney performing child support enforcement services under cooperative agreement.

Federal regulations at §304.10 provide that, as a condition for FFP, the provisions of 45 CFR Part 74, which establish uniform administrative requirements and cost principles, shall apply to all grants made to States under the IV-D program. Section 74.171 states that the rules for determining the allowable costs of activities conducted by governments are provided by the Office of Management and Budget's (OMB) Circular A-87, "Cost Principles for State and Local Governments." Attachment A, Section C.1.a provides that allowable costs must "be necessary and reasonable for proper and efficient administration of the grant programs, be allocable thereto under these principles, and except as specifically provided herein, not be a general expense required to carry out the overall responsibilities of the State or local governments." Under this provision, Federal reimbursement is not available for the salaries and expenses of county attorneys, district attorneys, prosecuting attorneys or similar officials in the course of performing their normal duties, because these costs represent general expenses of State and local governments and are not reasonable and necessary costs of the IV-D program.

When a District Attorney or similar official actually performs work on title IV-D child support cases, however, such as going to court or preparing a legal brief, this is not considered a general cost of State or local government. In addition, OCSE regulations at 45 CFR 304.21(a) provide that FFP at the applicable matching rate is available in the costs of cooperative agreements with appropriate courts and law enforcement officials in accordance with the requirements of §302.34, subject to the conditions and limitations in OCSE regulations. Therefore, the portion of a District Attorney's or similar official's time

actually spent providing child support enforcement services is eligible for FFP, as long as these services are covered under a cooperative agreement with the IV-D agency that meets the requirements in 45 CFR 302.34 and 303.107 and adequate time

distribution records are maintained to support the claims for FFP. This situation will generally, but not always, occur in a rural or small jurisdiction where, due to staff limitations, the District Attorney or similar official must actually spend time working on child support cases.

cc: Child Support Program Managers
Regions I - X

OCSE-PIQ-93-04

Date: JUL 26 1993

To: Nancy L. Long
Child Support Program Manager, Region VII

From: Robert C. Harris
Acting Deputy Director
Office of Child Support Enforcement

Subject: FFP for Review and Adjustment Services to Obligors

This is in response to your memo requesting policy guidance concerning the availability of Federal financial participation (FFP) for the costs of attorneys' fees on behalf of obligors in child support contempt proceedings. Kansas has questioned the distinction between the prohibition of FFP in this context and the availability of FFP in providing review and adjustment services to obligors in IV-D cases.

As we explained in the preamble to the final rule on the prohibition of Federal funding of the costs of incarceration and counsel for indigent absent parents, it is clear from the history of the Child Support Enforcement Amendments of 1984 that Congress did not intend to match all costs that might be related to operating a child support program. The Senate Finance Committee stated that it believed that: "Federal matching should not be available for expenditures related to incarceration of delinquent obligors and providing defense counsel for absent parents." S. Rep. No. 387, 98th Cong., 2d Sess. 23, reprinted in 1984 U.S.C.C.A.N. 2397, 2419.

When States have requested that the costs of incarceration of delinquent obligors and of defending indigent noncustodial parents in IV-D cases should be reimbursed, our policy from the inception of the program has been that these costs are not necessary and reasonable costs associated with the proper and efficient administration of the IV-D program. Furthermore, there is no statutory authority for payment of such costs. Regulations at 45 CFR 304.23(i) and (j) expressly preclude FFP for such costs. However, there is a clear statutory mandate that States review, and if appropriate, adjust, child support orders in accordance with the State's guidelines for setting child support award amounts at the request of either parent. We believe that the costs of adjusting orders in accordance with State guidelines assures a fair obligation which the obligor is most likely to pay. These costs are reasonable IV-D expenditures.

As explained in the preamble to the final rule governing review and adjustment requirements, (57 FR 61559, 61568, December 28, 1992), "[c]learly, Congress has mandated that each party to a

child support order in effect in the State and being enforced through the IV-D program has a right to request a review of that order. In addition, if appropriate, the State must adjust the order, in accordance with State guidelines for setting child support award amounts. However, this does not mean that the IV-D agency or its attorneys must 'represent' the parties in the process of conducting a review and/or adjusting the order; the State's role is not to advocate either an increase or a reduction in the amount of the order, but rather, to facilitate whatever adjustment is appropriate in accordance with the guidelines."

While we agree that indigent obligors may be entitled to representation under State law or court rule, Congress enacted title IV-D of the Act to establish and enforce the support obligations owed by noncustodial parents, not to defend obligors who have failed to comply with such orders. Appointment of defense counsel for accused contemnors is a State or local governmental responsibility beyond the scope of functions required under title IV-D.

We hope this information is helpful to you in responding to the questions raised by the Kansas IV-D officials.

OCSE-PIQ-93-05

DATE: AUG 23 1993

TO: Ann Schreiber
ACF Regional Administrator
Region II

FROM: Robert C. Harris
Acting Deputy Director
Office of Child Support
Enforcement

SUBJECT: Treatment of Unreimbursed AFDC Assistance and Medical Support Collections

This is in response to your letter dated May 20, 1993 regarding the treatment of unreimbursed assistance, and medical support collections. We assisted your staff in preparing responses to eleven of the seventeen questions presented in your memorandum which, for the most part, involved existing OCSE policy. Our responses to the remaining six questions are as follows:

Question 1: Since it is the responsibility of the IV-A agency to use the amount of child support collected in determining AFDC eligibility and the amount of the assistance payment, why is the IV-D agency required to maintain the unreimbursed assistance balance (UAB) on ACSES?

Response: Federal regulations at 45 CFR 302.51(b)(4) require the State to retain any amounts collected in excess of the monthly support obligation to reimburse past assistance payments made to the family for which the State has not been reimbursed. Of the amount retained by the State as reimbursement of past assistance payments, the IV-D agency shall determine the Federal government's share of the amounts retained so that the IV-A agency may reimburse the Federal government to the extent of its participation in the financing of assistance payments. In addition, amounts collected and applied to support arrears that exceed total unreimbursed assistance payments must be paid to the family under 45 CFR 302.51(b)(5). Also, the regulations at 45 CFR 302.51(f)(1), (2), and (3) contain provisions similar to those in paragraphs (b)(4) and (5) which apply to amounts collected in excess of the monthly support obligation once the family ceases to receive AFDC.

Under these provisions, the calculation, maintenance, and use of unreimbursed assistance amounts is essential to the proper distribution of child support collections. The unreimbursed assistance balance is necessary in the distribution process to ensure that the State only retains support collected up to the amount of assistance payments made to the family, and pays to the family any support collected in excess of such assistance payments.

Question 2: Since arrears can only be established from the date of the complaint, it is not the IV-D's agency's responsibility to advise the obligor that he/she owes an amount in addition to the court order. Therefore, what authority does the IV-D agency have to collect unreimbursed assistance which accrued prior to the complaint being filed? In addition, since the order is set in accordance with the State's child support guidelines, and not according to the unreimbursed assistance balance, what is the purpose of maintaining this information on the IV-D computerized system?

Response: The IV-D agency is only required to collect support based on a legally established on-going support obligation, or judgment for back support. (See OCSE-AT-93-4 dated March 22, 1993, and OCSE-AT-93-8 dated July 26, 1993.) However, when the family applies for AFDC, the applicant assigns all support rights to the State for each individual covered by the application for assistance, as required by 45 CFR 232.11. The assignment includes all current, prior and future support rights so long as the family remains on AFDC.

Under section 457(b)(4)(A) of the Social Security Act and the implementing regulations at 45 CFR 302.51(b)(4), support collections for periods before the family went on AFDC must be retained by the State to reimburse any past assistance payments made to the family. These collections are used to reimburse the difference between the assistance payment and support obligation while the family is receiving AFDC. The State does not have any discretion regarding the use of such arrearage amounts to reimburse the portion of the assistance payment that exceeds the support obligation. However, it does have flexibility regarding which months' assistance payments are reimbursed when collection on arrears is not sufficient to satisfy all unreimbursed past assistance.

In addition, many States establish judgments for back support in accordance with the State's child support guidelines after locating the non-custodial parent. For example, a family may receive AFDC for several years before the non-custodial parent is located. Assume the State establishes both an order for on-going support, and an order for back support, in accordance with the State's guidelines. If the monthly support obligation exceeds the assistance payment, it could result in the family's ineligibility for AFDC after receipt of the required payment. The amount of the judgment for back support based on guidelines could possibly exceed the amount of past assistance payments made to the family. In such event, once the State has reimbursed past assistance payments, excess support payments must be paid to the family.

As indicated in the response to question number 1, the calculation, maintenance, and use of the unreimbursed assistance

balance is essential to the proper distribution of child support collections in accordance with Federal requirements.

Question 3 : Because the amount of unreimbursed assistance paid to the family is reduced only by amounts retained by the State, but not reduced by amounts paid to the family, as pass-through payments of up to the first $50 per month in current support collected, isn't the obligor effectively required to pay twice, since the unreimbursed assistance balance does not reflect credit for his entire payment?

Response: Federal regulations at 45 CFR 302.51(b)(1) require that the State pay to the family the first $50 of any payment received in a month on a monthly support payment for that month, and the first $50 of any payment for a prior month made by the non-custodial parent in the month when due. As indicated in OCSE-PIQ-92-5 dated April 14, 1992, only the amount of the monthly support payment retained by the State under 45 CFR 302.51(b)(2) is used to reimburse, in whole or in part, the assistance payment for the month in which the support was collected, or the next month.

Although the amount of the $50 pass-through payment does not reimburse assistance paid to the family, the absent parent receives full credit on the support obligation for the amount of the pass-through payment. For example, assume that an AFDC assistance payment of $200 was issued to the family in February, and the monthly obligation of $110 was paid and received in the same month. The State must pay the first $50 to the family in accordance with 45 CFR 302.51(b)(1) and retain the remaining $60 as reimbursement for a portion of the $200 assistance payment made in accordance with 45 CFR 302.51(b)(2). In this case, the unreimbursed assistance at the end of the month would be $140. The non-custodial parent receives credit on the monthly support obligation for the entire payment of $110--$50 which was paid to the family and $60 retained by the State for reimbursement of public assistance.

Under the title IV-D program, the State is only authorized to establish orders for support in accordance with the State's child Support guidelines. Similarly, only support collected in satisfaction of such orders (whether for current or past-due obligations) may be used by the IV-D agency to reduce reimbursed assistance. If the obligor has paid all support due under the order, including all arrearages, no further child support payment is due under the IV-D program.

In those situations where a State has elected to pursue judgements for the full reimbursement of public assistance, this activity must be performed outside the IV-D program. Such payuments which may be required under State debt laws, are unrelated to the obligor's support obligation. FFP would not be

available for this activity under title IV-D.

Response: As indicated in our response to question number 3, seeking a judgment for unreimbursed public assistance that does not include the use of the State's child support guidelines is not an allowable IV-D function and, therefore, not eligible for FFP.

Also, as indicated in the response to question number 1, the calculation, maintenance, and use of unreimbursed AFDC assistance in the distribution process is essential to the proper distribution of child support collections.

Question 5: Audit report No. NJ-89-PR-PM states that administrative cost claims should show the activity of obtaining payment for past public assistance as non-IV-D for allocation of cost. This appears to conflict with the requirement that the amount of unreimbursed assistance is to be available and considered during the IV-D distribution process. If this is not a IV-D function, why are we required to maintain it on our computer system and who would pay for it? Modifying the system to segregate these amounts would be a costly project, possibly requiring a separate screen. If an APD is required, would the cost be covered under IV-D enhanced funding?

Response: In some States, furnishing aid to a family constitutes a debt for which the non-custodial parent is liable. Under such "laws of general obligation," amounts expended may be recovered by the State from the legally liable third party. These "State debt" laws exist independently of the IV-D program. Effective March 22, 1993, the debt owed to the State would not be considered child support if child support guidelines were not applied to determine the amount of the judgment. (See OCSE-AT-93-8.) The State's use of IV-D funds to enforce judgments not based on guidelines established on or after March 22, 1993 is not permitted. Additionally, State IV-D agencies responsible for such judgments must allocate costs for this activity to a non-IV-D reimbursable category.

As indicated in the response to question number 1, the calculation, maintenance, and use of unreimbursed AFDC assistance in the distribution process is a required IV-D function, and therefore, eligible for FFP. In addition, the system certification requirements for statewide comprehensive child support systems mandate that the system calculate and maintain information on unreimbursed assistance, and distribute child support collection in accordance with Federal requirements. FFP is available at the enhanced (90 percent) rate for the costs of including these functions in the Statewide system. If it is necessary to develop modifications to the automated system to address this issue, an APD update would be required in order to receive enhanced FFP.

Question 6: It is our understanding that when a specific dollar amount for medical care is included in a support order, the enforcement of medical support is a required IV-D function and the amount collected is treated as current support. Additionally, when less than the total amount of the support obligation (inclusive of a specific dollar amount for medical purposes) is collected, the IV-D agency would allocate the amount collected between the child support and the medical support specified in the order, in proportionate shares. Therefore, if arrears accrued on a case for which a specific dollar amount was ordered for medical support and less than the total amount of the arrears payment was collected, would the arrearage payment also be pro-rated?

Response: Federal distribution regulations at 45 CFR 302.51(a)(1) apply to both child support and medical support which is ordered to be paid in specific dollar amounts. For example, if the support order designates a specific dollar amount for medical purposes, whether it is expressed in monthly increments (e.g., $50.00 per month) or as a lump sum amount (e.g., $1,500.00 to pay for birth expenses), the IV-D agency must collect medical support. However, if the support order does not designate a specific dollar amount for medical purposes (e.g., absent parent is ordered to pay for child's orthodontia), enforcement of that aspect of the order is not a required IV-D function.

In the preamble to the final regulations published in the Federal Register on February 26, 1991 (56 FR 7988) and transmitted by OCSE-AT-91-01 dated March 8, 1991, we stated that "When less than the total amount of the obligation is collected, the IV-D agency should allocate the amount collected between the child support and the medical support specified in the order in proportionate shares. Current support must be given priority over past-due support, except with respect to collections made through the Federal income tax refund offset process." In addition, collections made through State income tax refund offset must be applied to arrears in accordance with 45 CFR 303.102(g). The allocation of payments between child support and medical support described above would apply to payments on arrearages as well as current support.

Wage Withholding/Medical Support Exceed Limits of Federal Consumer Credit Protection Act

OCSE-PIQ-93-06

DATE: September 8, 1993

TO: Rick Spear
Assistant Regional Administrator
Office of Family Security
Region IX

FROM: Robert C. Harris
Acting Deputy Director
Office of Child Support
Enforcement

SUBJECT: Treatment of Child Support Collections When Child Support Wage Withholding and Medical Support Combined Exceed Limits of Federal Consumer Credit Protection Act

This is in response to your letter of July 12, 1993 to Betsy Matheson regarding California's request for policy guidance in implementing withholding when the combined amounts submitted for withholding from wages or other income for cash child support and medical support (fixed dollar or insurance premium amount) would exceed the Federal Consumer Credit Protection Act (CCPA) limits. California specifically requested written policy on how child support agencies and employers should proceed when the wage assignment(s) to satisfy the combined cash support and health insurance premium or fixed dollar medical support obligation exceed 50 percent of the noncustodial parent's net disposable income.

Federal regulations at 45 CFR 303.100(a)(5), addressing procedures for wage or income withholding specify that "(I)f there is more than one notice for withholding against a single absent parent, the State must allocate amounts available for withholding giving priority to current support up to the limits imposed under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. 1673(b)). The State must establish procedures for allocation of support among families, but in no case shall the allocation result in a withholding for one of the support obligations not being implemented."

Federal regulations at 45 CFR 302.51(a)(1) require that amounts collected be treated first as current support. In the preamble to the final regulation, published in the federal register on February 26, 1991 (56 FR 7988), governing extension of child support enforcement services to Medicaid recipients and former AFDC recipients, we stated that "When less than the total amount of the obligation is collected, the IV-D agency should allocate the amount collected between the child support and the medical support specified in the order in proportionate shares. Current support must be given priority over past-due support."

While we believe that the allocation of payments between child support and medical support described above is the best method of distribution, the State is not required to allocate support payments between child support and medical support in situations where the individual noncustodial parent has been ordered to provide both child support and medical support to the same custodial family.

For enforcement through withholding of income of medical support provisions in IV-D orders where application of CCPA limits would preclude collection of the total amount of combined child support and medical support amounts, there is, at present, no Federal policy regarding any mandatory priority between wage withholding for child support and medical support. State laws and procedures would determine whether the amounts withheld under the CCPA limits would apply first to cash child support, to medical support, or some proportionate sharing. Consideration in making such policy determinations may include such issues as the consequences of a lapse in health insurance coverage and the availability of alternative enforcement remedies to collect unpaid cash support.

I hope this information is helpful in responding to the State's concerns.

Medical Support Enforcement for Tribal Members

OCSE-PIQ-93-07

DATE: November 15, 1993

TO: Barry L. Morrisroe
Chief, Office of Child Support Enforcement
Region X

FROM: Robert C. Harris
Acting Deputy Director
Office of Child Support
Enforcement

SUBJECT: Medical Support Enforcement for Tribal Members

This is in response to your memorandum of February 25, 1993, to Betsy Matheson, seeking guidance in responding to questions raised by Washington State concerning medical support enforcement for tribal members. Your specific questions and our responses are as follows:

Question 1: Does the availability of Federally-subsidized health care services to tribal members, such as those available through Indian Health Service (IHS) health care for an obligated parent's dependent children satisfy the obligation of a noncustodial parent to provide health insurance?

Response: The IV-D agency must provide medical support enforcement services to AFDC, title IV-E foster care, and Medicaid recipients, as required at 45 CFR 303.31(b), and to other IV-D recipients with their consent, as required at 45 CFR 303.31(c)(2).

The IV-D agency must petition the court or administrative authority to include health insurance that is available to the absent parent at reasonable cost, in new or modified support orders, unless the custodial parent and child(ren) have satisfactory health insurance other than Medicaid, as required at 45 CFR 303.31(b)(1). OCSE will consider IHS to be satisfactory health insurance if it is available to the custodial parent and the family is not on Medicaid. The IV-D agency must document in the case record, in accordance with requirements of 45 CFR 303.2(c), the availability of IHS services to the custodial parent and child(ren) when deciding to not petition for inclusion of medical support in the form of health insurance in the support order.

However, for those noncustodial Indian parents whose children are on Medicaid or reside outside of the service area, IHS services are not considered a viable alternative to health insurance coverage for medical support enforcement purposes. Therefore, for noncustodial Indian parents whose children live outside an IHS service area, the usual rules for petitioning for and enforcing medical support apply since there is no IHS "coverage."

Question 2: In light of the answer to question one above, what actions must be taken by the State IV-D agency/tribe in the medical support enforcement area to be in compliance with IV-D Federal requirements?

Response: As explained above, the IV-D agency must provide all appropriate IV-D medical support enforcement services, as delineated in 45 CFR 303.30 and 303.31 and as explained above. A tribe performing IV-D order establishment and enforcement functions under a cooperative agreement with the State IV-D agency would be required to adhere to the same Federal requirements as the State IV-D agency itself.

Question 3: What must be done to obtain Federal approval for Federal financial participation (FFP) for a tribe performing IV-D order establishment and enforcement functions under a cooperative agreement with the State IV-D agency?

Response: As stated in OCSE-PIQ-89-13, a cooperative agreement between the IV-D agency and a tribal entity, in which the IV-D agency delegates any of the functions of the IV-D program to the tribal entity, would have to meet the requirements for cooperative agreements as described at 45 CFR 302.34 and 303.107. More specifically, the agreement must specify that, in accordance with 45 CFR 303.107(c), the tribal entity will comply with title IV-D of the Act.

Non-IV-D Immediate Wage Withholding

OCSE-PIQ-93-08

December 23, 1993

To: Rick Spear
Assistant Regional Administrator
Office of Family Security
Region IX

Subject: Non-IV-D Immediate Wage Withholding

From: Robert C. Harris
Acting Deputy Director
Office of Child Support Enforcement

This is in response to your memorandum of November 23, 1993, requesting assistance in providing guidance to States regarding Federal requirements, effective January 1, 1994, for immediate withholding in all child support orders initially issued in the State which are not being enforced under title IV-D of the Social Security Act (the Act).

You ask whether the provisions of section 466(a)(8)(B) of the Act permit States to give parents in non-IV-D cases the option, as an alternative arrangement not to implement immediate withholding, of entering into a written agreement requiring the absent parent's employer to withhold support payments and send the amount directly to the custodial parent. The two exceptions to immediate withholding (i.e., good cause and written agreements providing for alternate arrangements) apply to both IV-D and non-IV-D cases. As discussed in OCSE-AT-93-06, States are free to adopt procedures for findings of good cause and alternative arrangements not to implement immediate withholding in non-IV-D cases which differ from the minimum criteria required in IV-D cases. A state can design criteria for alternative arrangements which allow the parents, in cases in which they do not want payments to go through the public agency or publicly accountable entity, or do not want to pay any fee that may be imposed, to choose to have withholding implemented through a system where the employer would send withheld amounts directly to the custodial parent (as opposed to the public agency or publicly accountable entity).

We understand that California currently provides immediate withholding in non-IV-D cases through this kind of system, and such a mechanism would be allowable on a case by case basis if the parties agree to it as an alternative arrangement, subject to the State meeting all other Federal requirements for non-IV-D cases. States will still need to establish a system for non-IV-D withholding which meets the mandatory requirements at 42 USC 666(a)(8)(B), including the requirement that payments flow

through a public agency or publicly accountable entity, but the volume of cases under that procedure may be lessened by affording

parents an alternative arrangement.

Alternative arrangements providing for direct payments to the obligee are not allowable in IV-D cases in which the family is receiving public assistance or applied for assistance in securing child support through the IV-D program.

FFP Availability for Paternity Acknowledgment Processing by State Vital Statistics Agencies and Collection of Parents' Social Security Numbers during Birth Registration Process

OCSE-PIQ-93-09

December 30, 1993

DATE: December 30, 1993

TO: ACF Regional Administrators
Regions I - X

FROM: Robert C. Harris
Acting Deputy Director
Office of Child Support Enforcement

SUBJECT: Non-IV-D Immediate Wage Withholding

We were recently contacted by the National Council of State Child Support Enforcement Administrators (NCSCSEA), requesting that we reconsider our policy set forth in OCSE-AT-93-06 regarding the Federal statutory requirement that States must provide, effective January 1, 1994, for immediate withholding in all child support orders initially issued in the State which are not being enforced under title IV-D of the Social Security Act (the Act). The following is our response to the questions posed by NCSCSEA.

NCSCSEA asked that States not be compelled to provide for public administration of wage withholding in non-IV-D cases. NCSCSEA contended that the Federal statute at 42 U.S.C. 666(a)(8)(B) does not require States to administer non-IV-D withholding using a public agency or publicly-accountable entity because § 666(a)(8)(B) (iii) applies the requirements for IV-D withholding at § 666(b)(2), (5), (6), (7), (8), (9) and (10) to non-IV-D withholding only "where applicable." NCSCSEA argued that the requirements for the public administration of withholding in paragraph (b)(5) are "not applicable" to IV-D cases. We do not believe that this interpretation of the statutory language is correct.

Rather than applying all IV-D requirements to non-IV-D immediate withholding, Congress limited their application in two ways. First, in cross-referencing IV-D requirements, Congress did not include paragraphs 666(b)(3) and (4), which require delinquency-based withholding and advance notice to the absent parent. Second, Congress applied the qualifying phrase "where applicable" to the remaining paragraphs of § 666(b). For example, as noted by NCSCSEA, the language in paragraph (b)(2) which requires a IV-D application as a condition for wage withholding is not "applicable," but the last sentence of that paragraph does apply. Similarly, the requirement at paragraph (b)(6)(A)(i) that support be distributed in accordance with requirements at § 657 is not "applicable" to non-IV-D cases, but the rest of the paragraph is clearly "applicable." Paragraph (b)(5) applies, insofar as it deals with administration of non-IV-D withholding through a public agency or publicly accountable entity, but is not "applicable" in requiring distribution in accordance with §

657. If Congress had intended that States use a public agency or publicly accountable entity for IV-D cases only, it would have eliminated any reference to paragraph (b)(5) entirely, as it did with paragraphs (b)(3) and (4).

NCSCSEA contended that the position set forth in OCSE-AT-93-06 that Federal financial participation (FFP) is not available for implementing non-IV-D withholding is in error. The statutory language on this issue is clear. The Child Support Enforcement Amendments of 1984 required States to have in effect two distinct procedures for dealing with wage withholding. The first, required under § 666(a)(1) and (b), pertained only to cases being enforced under title IV-D. The second, required under § 666(a)(8), provided that all new or modified orders issued in the State provide for wage withholding when an arrearage occurred without the necessity of applying for IV-D services. Our position on the availability of FFP for implementing the requirements of paragraph (a)(8) was stated in OCSE-PIQ-86-2 (June 27, 1986): "Non-IV-D wage withholding costs are not eligible for FFP." The creation of new paragraph (a)(8)(B) in the Family Support Act requiring immediate withholding in all initial orders issued in the State "...not being enforced under [title IV-D]..." is an extension of this function, and no FFP is allowable for costs incurred in this activity.

States may choose from a variety of approaches in implementing this requirement. One option could be a procedure where the employer sends the withheld amount directly to the custodial parent's bank account through electronic funds transfer (EFT) or by check. The bank records associated with the custodial parent's account would provide an adequate payment record. This approach would assure prompt distribution, provide for keeping adequate records to document payment of support, permit the tracking and monitoring of such payments.

We also pointed out in the OCSE-AT-93-06 that States are free to adopt procedures for findings of good cause and alternative arrangements not to implement non-IV-D immediate withholding which differ from the minimum criteria required in IV-D cases. We have also recently clarified, in OCSE-PIQ-93-08, that States could design criteria for alternative arrangements which allow the parents, in cases in which they do not want payments to go through the public agency or publicly accountable entity, or do not want to pay any fee that may be imposed, to choose on a case-by-case basis to have withholding implemented through a system where the employer would send withheld amounts directly to the custodial parent (as opposed to the public agency or publicly accountable entity). States would still need to establish a system for non-IV-D withholding which meets the mandatory requirements at 42 USC 666(a)(8)(B), but the volume of cases under that procedure may be lessened by affording parents an alternative arrangement.

Finally, NCSCSEA raised a question concerning cost recovery of

State expenditures for administering non-IV-D withholding. We would like to clarify any misunderstanding of cost recovery activities explained in OCSE-AT-93-06. The $25 annual fee restriction in 45 CFR 302.57(b)(3) is applicable to activities conducted upon the request of an individual obligor or obligee where, at the State's option, either parent can request that payments be made through the State agency or other entity which administers the State's income withholding system. This "cap" on fees does not apply to recovery of costs for performing mandatory non-IV-D withholding activities conducted by the IV-D agency where costs must be allocated between IV-D and non-IV-D activities. Therefore, States may recover the full cost of administering withholding in non-IV-D cases.

cc: Program Managers
Child Support
Regions I - X

OCSE-PIQ-94-01

DATE: January 28, 1994

TO: ACF Regional Administrators
Regions I - X

FROM: David Gray Ross
Deputy Director
Office of Child Support Enforcement

SUBJECT: Direct Income Withholding under the Uniform Interstate Family Support Act (UIFSA)

This addresses several recent inquiries from Regional Offices and States regarding direct income withholding under the Uniform Interstate Family Support Act (UIFSA).

Question: UIFSA requires employers in a State that has implemented UIFSA to honor income withholding orders issued in other States. Do Federal regulations allow a IV-D agency to send an income withholding order directly to an employer in another State if that other State has implemented UIFSA?

Response: Yes, assuming the withholding order/notice meets the UIFSA State's definition of an income withholding order. A IV-D agency may send an income withholding order directly to an employer in another State if (1) that other State's law requires the employer to honor the order or (2) the IV-D agency's State can assert long-arm jurisdiction over the employer. Otherwise, the IV-D agency requesting withholding must refer the matter to the IV-D agency in the State where the absent parent is employed to initiate withholding, in accordance with 45 CFR 303.100(h)(3).

Discussion: UIFSA is a new model State law designed to replace the Uniform Reciprocal Enforcement of Support Act (URESA). Several States have adopted UIFSA (some with delayed effective dates) and many more States are considering enactment. As a result, some States are now using UIFSA, rather than URESA, to process interstate cases. Section 501 of UIFSA provides that an income withholding order issued in another State may be sent by first class mail to an employer in a UIFSA State. Upon receipt of the order, UIFSA requires that the employer treat the order as if it had been issued in the employer's State.

OCSE-PIQ-93-01 and the Response to Comments sections of both the final regulations on wage withholding published May 9, 1985 (50

FR 19608, 19627) and the final regulations on immediate income withholding published July 10, 1992 (57 FR 30658, 30680) addressed the issue of when it is appropriate for a IV-D agency to directly implement wage withholding against a non-resident employer. We stated that this is a matter of State law; i.e., a State may implement withholding directly if allowable under State law.

In the policy issuances cited above, we gave an example of how State law could provide a basis for a State to use direct withholding. Specifically, we said a State may use its long-arm statute for wage withholding if the State's statute and the particular facts of the case allow the State to acquire long-arm jurisdiction over an employer in another State.

We would now like to clarify that there is a second way that a State IV-D agency acquires authority to use direct withholding against an employer in another State. Under the second way, it is actually the employer's State law, rather than the requesting State's law, which provides the authority for direct withholding. Specifically, a State can use direct withholding if State law in the employer's State, such as section 501 of UIFSA, compels employers to honor out-of-State withholding orders.

Federal regulations regarding interstate withholding at 45 CFR 303.100(h)(3) require the initiating State, within a 20-calendar-day timeframe, to notify the IV-D agency of the State in which the absent parent is employed to implement interstate withholding. This requirement is reiterated in regulations at 45 CFR 303.7(b)(2), which require an initiating State to forward cases, including requests for wage withholding, to the responding State's IV-D central registry within a 20-calendar-day timeframe. However, both of these regulations only apply to interstate cases; direct withholding does not involve interstate agency activity since one State is taking enforcement action without involving the IV-D agency in a responding State.

We emphasize, however, that direct withholding is only allowable if provided for by State law. If the State requesting withholding lacks long-arm jurisdiction over the employer, or if the employer's State has not enacted section 501 of UIFSA or a similar law, the requesting State must implement interstate withholding in accordance with regulations at 45 CFR 303.100(h) by sending the request to the IV-D central registry in the employer's State. If a State attempts direct withholding in other cases, the employer or the obligor could raise a successful jurisdictional challenge.

In addition, before sending a withholding order directly to an out-of-state employer in a UIFSA State, a IV-D agency should ensure that the withholding order/notice meets the UIFSA State's

definition of an income withholding order. Under section 101(6)

of UIFSA, an "income withholding order" means an order or other legal process directed to an obligor's employer, as defined by State law.

Furthermore, IV-D agencies should be aware that as of December 31, 1993, one State, Montana, has enacted UIFSA without the direct withholding provision. A IV-D agency should not send a withholding order directly to an employer in a UIFSA State if that State did not enact section 501 of UIFSA, unless the IV-D agency's State has long-arm jurisdiction in the case.

Finally, we suggest that before implementing direct withholding to an out-of-State employer, a IV-D agency determine whether that employer has a registered agent in the IV-D agency's own State. If so, the IV-D agency may be able to implement withholding locally by sending the withholding order/notice to the registered agent. This may enable the agency to control and monitor the employer's compliance with the order more efficiently.

cc: Child Support Program Managers
Regions I - X
Assessment of Fees by Collection Entities not under IV-D contract

OCSE-PIQ-94-02

April 11, 1994

TO: Suanne Brooks
ACF Regional Administrator
Region IV

FROM: David Gray Ross
Deputy Director
Office of Child Support Enforcement

SUBJECT: Assessment of Fees by Collection Entities not under IV-D Contract

This is in response to your memorandum dated October 7, 1993 regarding whether a non-custodial parent should be given full credit against the support obligation for the payment made when a collecting agency not under contract with the IV-D agency has deducted a processing fee. We apologize for the delay in responding.

Your memorandum presents the following scenario. In an interstate case, where Florida is the initiating State and Oklahoma is the responding State, the non-custodial parent is required by an Oklahoma support order to pay $150 per month. The non-custodial parent pays $150 per month which is forwarded by Oklahoma to the Clerk of Court (Court Depository) in Osceola, county, Florida. The Depository is required under Florida statute at §61.181 to impose and collect a fee for receiving, recording, reporting, disbursing and monitoring support payments. In this case, the Depository deducts a fee of $5.25 and forwards the balance of $144.75 to the IV-D agency for distribution to the custodial parent.

Your questions and our responses are as follows:

Question 1: Must a IV-D agency credit a non-custodial parent with a full payment if he pays the full amount of his child support obligation, but fails to include a fee assessed by a collecting agency not under contract with the IV-D agency when the collecting agency deducts the fee from his payment in accordance with State law?

Response: Yes, the non-custodial parent is required by an Oklahoma support order to pay $150 per month, and pays $150 which satisfies the support obligation. The Depository in Florida imposes and collects a fee for each support payment in accordance with Florida law. After deducting the fee, the balance of the non-custodial parent's payment is forwarded by the Depository to the IV-D agency for distribution in accordance with Federal

distribution requirements. Under the facts presented, since

Florida has no jurisdiction to modify the amount ordered by Oklahoma or assess any fees against the non-custodial parent, and the Oklahoma order is satisfied, the IV-D agency must credit the non-custodial parent's account with the full amount of the $150 payment. In the situation presented, $5.25 of the amount credited would not be available for distribution.

Question 2: If the response to question number 1 is that the IV-D agency must credit the non-custodial parent with full payment of his child support obligation, the effect will be to reduce the amount of child support distributed to the custodial parent. Must the IV-D agency notify the custodial parent that the amount she receives constitutes the obligated amount of support less the Court Depository's fee?

Response: The IV-D agency should notify the custodial parent that support payments will be reduced by the amount of the processing fee deducted by the Depository in accordance with State law.

OCSE-PIQ-94-03

Date: April 13, 1994

To: John Kersey
Child Support Program Manager
Region IX

From: David Gray Ross
Deputy Director
Office of Child Support Enforcement

Subject: Requests to Stop Reviews of Child Support Orders

This is in response to your December 20 letter forwarding California's letter requesting reconsideration of Federal policy concerning requests by parents in non-AFDC IV-D cases to withdraw a request for review of their support order after the review has begun. We have received similar inquiries from other Regional Offices. California's inquiry and our response is as follows:

Question: May a State establish procedures under which the parent requesting a review may withdraw the request after the review begins and, after notification of the withdrawal request to both parents that the process will terminate if neither parent requests that it continue?

Response: Yes. A State, at its option, may establish procedures for responding to requests by the parent who has requested a review of a child support order in a IV-D case (AFDC or non-AFDC) that their request be withdrawn and the process cease. In establishing such procedures for handling requests to withdraw from the review process and terminate further action to seek an adjustment, the State should, at a minimum, provide notice to the other parent and an opportunity for that parent to request that the process continue. A State may wish to impose certain restrictions on any withdrawal process it may develop, including, but not limited to, the following: 1) the request must be in writing; 2) the decision to stop further proceedings must be consented to by both parties; 3) a subsequent request for review will not be accepted within a particular time period after the withdrawal is granted.

Under any such procedures, the withdrawal of the review request may be considered at any time, although a State may wish to restrict honoring the request to the 15-day period before a decision to conduct a review is made as specified in §303.8(e)(2), or, if a review is in progress, to the period following the conclusion of the review and issuance of notification of the results to both parties, as specified under §303.8(c)(7). In the latter situation, upon receipt of the

results, the party originally requesting the review could request that no action be taken to seek adjustment based on the review findings. In any event, whenever the process is terminated at the requesting party's request, the State should document the case record to reflect the circumstances and basis for not continuing with the review or with seeking an adjustment.

Certainly, a State is not required to allow parties an opportunity to withdraw a request. Furthermore, States may wish to avoid the need to handle potential withdrawal requests by guiding parties in making informed decisions about whether to request a review. States can do so by clearly explaining in both the notice of the right to request a review issued to both parties as well as the advance notice issued prior to an actual review that once a review begins, it proceeds to completion and the circumstances, if any, under which a request to terminate the process will be honored.

I hope this information is helpful in responding to California's inquiry.

cc: ACF Regional Administrators

Regions I - X

Garnishment of College Work Study Program Grants to Enforce Child Support Obligations

OCSE-PIQ-94-04

MAY 23, 1994

TO: Jo B. Shannon
Child Support Program Manager
Region VIII, Denver

FROM: David Gray Ross
Deputy Director
Office of Child Support Enforcement

SUBJECT: Garnishment of College Work Study Program Grants to Enforce Child Support Obligations

This is in response to your memorandum of November 8, 1993 asking under what circumstances, if any, States are permitted to garnish, for child support enforcement purposes, monies received by an institution under a Federal College Work Study (FWS) program grant. The question and our response is as follows:

Question: May States garnish, for purposes of collection of child support, monies received by an institution under the FWS program?

Answer: No. The FWS program was created by the Higher Education Act of 1965. The statute provides, at 20 USC § 1082(a)(2), that in the performance of the Secretary of Education's role in administering the FWS "...no attachment, injunction, garnishment, or any similar process...shall be issued against the Secretary or property under the Secretary's control..." In addition, §1094(a)(1) requires that, in order to be an eligible institution of higher education for the purposes of the FWS, the college or university must agree to use funds received from the Department of Education (DOEd) "...solely for the purpose specified in and in accordance with the provisions of [the FWS]." The financial assistance provided by the college or university to the student is determined according to a need analysis set forth in §1087kk, which is based on the cost of attendance less any financial contribution by the student's parents and any other financial assistance. Under these provision, the cost of attendance is restricted to tuition, room and board, books, fees, supplies, transportation, and child or dependent care during periods of class time, study time, field work and commuting time.

Recently, the DOEd issued the 1993-94 edition of the Federal Student Financial Aid Handbook, containing instructions for colleges and universities administering the FWS program. Chapter 2 of the handbook, "Garnishment of FWS Wages," instructs college administrators that:

> A student's FWS wages may be garnished only to pay any costs of attendance that the student owes the school or that will become due and payable during the period of the award. Schools must oppose any garnishment order they receive for any other type of debt; paying FWS funds in such cases would mean

> that the funds would not be used 'solely for educational purposes,' a requirement for SFA [Student Financial Assistance] funds. As schools may not necessarily be the employers in an off-campus employment arrangement, they must adopt effective procedures to notifY off-campus employers that garnishment of FWS wages for any debt other than a cost of attendance is not permissible.

Under Federal rules of construction, each Federal agency is assumed to be the final arbiter when interpreting statutes which it has the responsibility for administering.

Finally, although FWS is a Federal program, the monies paid to the student cannot be garnished under the provisions of 42 USC § 659 and regulations at 4 CFR Part 581, since FWS payments are not "remuneration for employment" and the students are not employees of a Federal agency or entity simply by virtue of being recipients of Federal funds through the FWS program. Although FWS wages may not be garnished, they may be considered or treated as "income for purposes of determining an obligor's income and earnings in the application of State guidelines for setting and modifying child support award amounts, depending upon the breadth of a State's definition of income under guidelines. Of course, even where FWS wages are treated as "income" under a State's guidelines, a judge or administrator setting a child support award amount is free to consider factors differentiating FWS wages from wages which are derived from other sources. Consideration of such factors may be relevant in determining, pursuant to 42 U.S.C. £667, whether the presumptive amount of support under the State guidelines is unjust or inappropriate.

CC: ACF Regional Administrators
Regions I, VII, IX and X

Child Support Program Managers
Regions I, VII, IX and X

OCSE-PIQ-94-05

Date: June 3, 1994

To: ACF Regional Administrators
Regions I - X

From: David Gray Ross
Deputy Director
Office of Child Support Enforcement

Subject: Notice of the Right to Request a Review

This is in response to a number of inquiries from States concerning the responsibility to provide notice of the right to request a review of the order to each parent in a IV-D case with an order being enforced in the State, in accordance with 45 CFR 303.8(c)(2).

Question 1: In an interstate case, may the responding State with an order satisfy the requirement to provide notice to each parent of the right to request a review by sending the custodial parent's notice to the initiating State IV-D agency (or alternatively, to the custodial parent in care of the initiating IV-D agency)?

Response: Yes. Section 303.8(c)(2) requires States to notify each parent subject to a child support order in the State being enforced under Title IV-D of the right to request a review of the order and the appropriate place and manner in which the request should be made. The regulation does not dictate how States should notify each parent, other than that the notice be written and that advertising will not suffice. Since the standard communication link in interstate cases is between the two State IV-D agencies, rather than between the obligee/custodial parent and the responding State, it would be appropriate for the notice to be transmitted to the initiating State IV-D agency who would then forward it to the custodial parent. We encourage the initiating State IV-D agency to add a cover letter informing the custodial parent to contact the local case worker to make a request for a review. This would prevent the custodial parent from directly contacting the State with the order.

This is consistent with our position of sending the pre-and post-review notices to the obligee in care of the initiating State who then is required to send the obligee a copy of such notice within 5 days of receipt (final October 13, 1993 requirements issued December 28, 1992, 57 FR 61567). This approach to sending the

notice may also facilitate actually getting the notice to the custodial parent since the initiating State usually is more likely to have the most current address for the recipient of IV-D services. Furthermore, it allows the initiating State IV-D

agency to be cognizant of case activities in the responding State, and in a position to assist the recipient of services in making any review request to the responding State and in monitoring actions taken as a result.

Question 2: May the requirement to provide notice of the right to request a review be met by conveying such notice in the pre-review notice issued in an individual case as required by 45 CFR 303.8(c)(6)(i)?

Response: No. Under such an approach, only those parents whose orders are subject to the triennial review requirement or who actually have requested a review will be notified. Placing the notice of the right to request a review in the pre-review notice does not guarantee that all parents with an order in the State receive the notice in a timely fashion or meet the intent that parties be made aware of their right to ask that a review be conducted. The right to request a review notice requirement under §303.8(c)(2) applies to all IV-D cases with orders in effect in the State, not just orders that are currently eligible for a possible review (36 months old).

Question 3: May the notice of the right to request a review be placed in the notice of State income tax refund offset sent to obligor parents?

Response: Yes. States may include such notice as a way of meeting the notice requirement for those parents to whom the State income tax refund offset notices are issued. However, since not all parents are issued State income tax refund offset notices, the State will also need other alternative methods to ensure that all parents with orders in effect in the State being enforced under Title IV-D are issued notices of the right to request a review.

Question 4: If the absent parent's location is unknown, may the State meet the requirement to send a notice of the right to request a review by periodic publication?

Response: No. As specified in the response to comments section of the preamble to the final rules governing 1993 review and adjustment requirements (57 FR 61559 at 61571 issued December 28, 1992), "Although there is no requirement for proof of actual receipt, section 466(a)(10)(C)(ii) of the Act contemplates that the notice be issued in a matter reasonably calculated to reach the intended recipients, as it directs that notice be given to "each parent." Therefore, placing an advertisement in a newspaper of general circulation will not, in itself, suffice to

meet this requirement as it is conceivable that not all parents who should receive the required notice will receive it." The notice of the right to request a review can be sent to the last known address, and if it is returned, this fact should be

documented and the notice can be resent when the absent parent is located.

The requirement to send the right to request a review notice can be met by alternatives as suggested in the preamble to the final regulations of the October 13, 1993 requirements (57 FR 61570). Such notices could also be incorporated in any informational materials presented to the parties at the time the order is originally entered. Some court clerks routinely distribute instructions to parties, which could be expanded to include information about the right to request review. Adding a specific review clause in every child support order at the time of establishment or adjustment is another alternative for satisfying this notice requirement. This requirement affords States flexibility in creating mechanisms for notifying each parent of the right to request a review, provided that the methods selected are reasonably calculated to provide the necessary notification of both the right to request review and how and where to exercise this right.

Question 5: Which State should send the right to request a review notice when more than one order exists for a case?

Response: Any State with an order being enforced under Title IV-D which could be modified under State law must send this notice. This requirement does not pertain to orders of one State which are filed or registered in another State solely to facilitate wage withholding. Nevertheless, this requirement may result in multiple notices being sent to parents in situations in which enforceable and modifiable support orders exist in more than one State.

FFP for hospital-based paternity programs and collecting SSNs as part of birth registration

OCSE-PIQ-94-06

July 12 1994

Ms. Leslie L. Frye
Chief
Office of Child Support
Department of Social Services
State of California
744 P Street
Sacramento, CA 95814

Dear Ms. Frye:

This is a response to your recent letter requesting clarification of policy regarding Federal funding of hospital-based paternity programs and collection of parents' Social Security Numbers as part of the birth registration process.

We anticipate that final regulations regarding hospital-based programs, which specify the nature and extent of Federal funding for such programs, will be published within the next few months. The proposed regulation indicated that, under current policy, Federal financial participation (FFP) at the regular rate is available for certain costs associated with the hospital-based program, including costs of: necessary agreements between the IV-D agency and birthing hospitals or other State agencies; IV-D staff that work on developing and implementing (e.g., training, drafting materials, meeting with hospital officials) the hospital-based program; and nominal payments per acknowledgement to birthing hospitals to help defray administrative costs.

The proposed regulation would codify the policy regarding nominal payments per acknowledgment by making FFP available for payments of $20 or less to birthing hospitals for each voluntary acknowledgment obtained through a hospital-based program. In addition, the proposed regulation would make FFP available for the costs of developing and providing to birthing hospitals and other entities that provide prenatal or birthing services written and audiovisual materials about paternity establishment and forms necessary to voluntarily acknowledge paternity; and reasonable and essential short-term training regarding voluntary acknowledgment of paternity associated with a State's hospital-based program.

Under the proposed rule, FFP would not be available for the start-up or ongoing costs of an agency responsible for maintaining completed paternity acknowledgments, unless that

agency is the IV-D agency. Therefore, neither the proposed regulation nor existing policy allow FFP for the vital statistics agency's or local recorder's costs of establishing an automated or manual system to process or store paternity affidavits.

Furthermore, neither the proposed regulation nor existing policy allow FFP for payments to vital statistics agencies or local recorders for each completed acknowledgment (such as the $10 payment you propose to give to vital statistics registrars and local recorders). Both existing policy and the proposed regulation allow FFP for nominal payments to hospitals, not to vital statistics agencies/local recorders, for each completed voluntary acknowledgment. The reason for this distinction is that, while seeking a voluntary acknowledgment is a secondary activity for a hospital, the processing of voluntary acknowledgments is a normal duty of the vital statistics agency. We consider costs associated with the vital statistics agency's processing of voluntary acknowledgments to be general expenses required to carry out the overall responsibilities of State and local government, and therefore ineligible for FFP.

However, in order to ensure that the IV-D agency has necessary access to completed paternity acknowledgments, the proposed rule indicates that FFP would be available for certain IV-D costs associated with obtaining related information and documentation. Specifically, FFP would be available for the IV-D agency's costs of: determining whether an acknowledgment has previously been forwarded to the entity responsible for maintaining completed acknowledgments, and an agreement (if such an agreement is necessary) governing the routine exchange of information or documents between the IV-D agency and an entity which gives access to information or documents regarding acknowledgments. Furthermore, under current policy, FFP is available for reasonable and necessary costs, including fees, incurred by the IV-D agency in obtaining copies from an entity of documents such as voluntary acknowledgments or birth certificates.

Concerning policy on Federal funding for the collection of the Social Security Numbers as part of the birth registration process, the policy remains as stated in OCSE-AT-90-04. While we understand your concern about the need for funding, it would be inappropriate to use IV-D funding to pay for the cost of vital statistics agencies' automated systems. Although collecting Social Security Numbers as part of the birth registration process benefits the child support enforcement program, Federal statute requires collection of Social Security Numbers as part of the birth registration process; therefore, collection of the numbers is not a IV-D responsibility. It is neither a IV-D State plan requirement, nor included in title IV-D of the Social Security Act.

Nevertheless, once the Social Security Numbers have been collected, it is important that IV-D agencies have access to the data for child support purposes. Therefore, as stated in OCSE-AT-90-04, FFP is available for the establishment of, and costs associated with, all necessary agreements between State vital statistics agencies and IV-D agencies to request and transfer Social Security Numbers. For example, FFP would be available for

the costs of the IV-D agency maintaining a master file of records provided by vital statistics agencies.

I hope this information is helpful. Thank you for your continued work on behalf of children.

Sincerely,

David Gray Ross
Deputy Director
Office of Child Support
Enforcement

cc: John Kersey, Program Manager
Region IX

OCSE-PIQ-94-07

DATE: September 6, 1994

TO: Barry L. Morrisroe
Child Support Program Manager
Region X

FROM: David Gray Ross
Deputy Director
Office of Child Support Enforcement

SUBJECT: Medical Support Enforcement for Tribal Members -- Revision to OCSE-PIQ-93-07

This is in response to an issue raised in the April 22, 1994, letter by the Washington State Acting IV-D Director, requesting reconsideration of the Office of Child Support Enforcement (OCSE) policy interpretation question, dated November 15, 1993, addressing medical support enforcement for tribal members (OCSE-PIQ-93-07). The incoming question in OCSE-PIQ-93-07 was whether the availability of Federally-subsidized health care services to tribal members, such as those available through the Indian Health Service (IHS) would satisfy the obligation of a noncustodial parent to provide health insurance.

After consultation with the Director of the Division of Legislation and Regulations of the IHS, OCSE responded to the incoming question in OCSE-PIQ-93-07. The PIQ specified that the Federal regulations, at 45 CFR 303.31(b)(1), require IV-D agencies to petition the court or administrative authority to include health insurance that is available to the absent parent at reasonable cost, in new or modified support orders, unless the custodial parent and child(ren) have satisfactory health insurance other than Medicaid.

As suggested by the IHS, OCSE also specified in the PIQ that OCSE would consider IHS health care services to be satisfactory health insurance if it is available to the custodial parent and the family is not on Medicaid. The PIQ also required that the IV-D agency document in the case record the availability of IHS services to the custodial parent and child(ren) when deciding not to petition for inclusion of medical support in the form of health insurance in the support order.

The State's question and our response follow:

Question: May OCSE's policy be broadened to hold that IHS health care is also an acceptable alternative to private health insurance in cases where the dependent children are receiving Medicaid?

Response: Yes. After consideration of the information presented and consultation with and the concurrence of the Health Care

Financing Administration (HCFA) and the IHS, OCSE will consider IHS health care services to be satisfactory health insurance if such services are available to the custodial parent, regardless of whether the family is eligible for Medicaid. The IV-D agency would still need to document in the case record, in accordance with requirements of 45 CFR 303.2(c), the availability of IHS services to the custodial parent and child(ren) when it decides not to petition for inclusion of medical support in the form of health insurance in the support order. Nothing in this response shall affect the eligibility of dependent Indian children for Medicaid or the status of the IHS as the payor of last resort as provided in 42 CFR 36.61.

cc: ACF Regional Administrators
Regions I - X

Child Support Program Managers
Regions I - IX

OCSE-PIQ-94-08

Date: September 16, 1994

To: Barry L. Morrisroe
Child Support Program Manager
Region X

From: David Gray Ross
Deputy Director
Office of Child Support Enforcement

Subject: Disclosure of Information Regarding IV-D Calculating Child Support

This is in response to your memorandum of August 19 regarding Oregon IV-D agency activities in calculating child support amounts for individuals in pro se divorce proceedings who are either recipients of IV-D services or applying for IV-D services simultaneously with their request for these calculations. You indicate that IV-D case information would be used to determine these calculations which would then be used to obtain a child support order in conjunction with a divorce order. Your specific questions and our responses are as follows:

Question 1: May a State use IV-D case information to comply with the request of a recipient of IV-D services to do a child support calculation to be used in a pro se divorce proceeding where child support is to be established?

Response: Yes. Federal regulations at 45 CFR §303.4(d) require that for all cases referred to the IV-D agency or applying under §302.33, the IV-D agency must within 90 calendar days of locating an absent parent or of establishing paternity, establish an order for support, or complete service of process necessary to commence proceedings to establish a support order (or document unsuccessful attempts to serve process, in accordance with the State's guidelines defining diligent efforts under §303.3(c)).

In conjunction with case processing, the IV-D agency may determine or be advised that the recipient of services is also pursuing legal action, either pro se or through counsel, to obtain a divorce or decree of dissolution, which will include an order for child support. If action to obtain temporary or permanent support is actually underway, the agency could monitor or, if necessary and allowed by State law, intervene in the action as an alternative to pursuing an independent support order. Under such circumstances, participation to the extent of assisting in calculating the correct amount of support to be paid under State guidelines would facilitate the efforts to obtain an order. It would be considered directly connected to the IV-D activity of obtaining support. Therefore, use or disclosure of the case information for purposes of obtaining a support order would be considered appropriate and not contrary to safeguarding

requirements at 45 CFR 303.21(a). However, before the IV-D agency could be expected to proceed with these calculations, individuals are required to apply for IV-D services. Information from IRS may not be disclosed without verification by an independent source.

Question 2: May the State provide child support calculation services to a recipient of IV-D services, using information provided by the recipient, and not using IV-D case information?

Response: Yes, the State can provide calculation services using information provided by the recipient of IV-D services.

Question 3: Would the recipient of IV-D services seeking to have the State do the child support calculation have to provide written assurance that the IV-D case information would be used exclusively to establish child support?

Response: No. However, while there is no Federal requirement that written assurances be obtained, nothing precludes States from placing such requirements or protections on the information disclosure process, or otherwise having more restrictive State laws.

I hope this information is helpful in responding to Oregon's request.

cc: ACF Regional Administrators
Regions I – IX

OCSE-PIQ-94-09
DATE: December 27, 1994

TO: ACF Regional Administrators, Regions I - X

FROM: David Gray Ross
Deputy Director
Office of Child Support Enforcement

SUBJECT: FFP Availability for Paternity Acknowledgment Processing by State Vital Statistics Agencies and Collection of Parents' Social Security Numbers during Birth Registration Process

The attached letter clarifies OCSE-PIQ-94-06 regarding the availability of FFP for the processing of in-hospital voluntary paternity acknowledgments by state vital statistics agencies. We explained that the final Federal regulation implementing the paternity establishment provisions of the Omnibus Budget Reconciliation Act of 1993 (published on December 23, 1994 at 59 FR 66204) provides FFP for payments of up to $20 to birthing hospitals (and other providers of prenatal and birthing services) for each voluntary acknowledgment obtained pursuant to an agreement with the IV-D agency. A hospital may pay any part of the $20 payment to a vital statistics agency. The agreement between the hospital and the IV-D agency may address ways to ease the administrative burden on the hospital of making payments to a vital statistics agency. For example, the agreement may state that the IV-D agency, on behalf of the hospital, will pay the allocated portion of the payment directly to the vital statistics agency. In other respects, our policy regarding FFP for vital statistics agencies remains the same as stated in OCSE-PIQ-94-06 and the newly-published final regulation.

cc: CSE Program Managers, Regions I - X

December 27, 1994

Ms. Leslie Frye
Chief
Office of Child Support
Department of Social Services
State of California
744 P Street
Sacramento, CA 95814

This is in response to your letters regarding the availability of Federal financial participation (FFP) for the processing of voluntary paternity acknowledgments by the State vital statistics agency and the collection of parents' Social Security Numbers as part of the birth registration process. Final regulations have now been published, and we have reexamined the response contained in our July 12 letter (OCSE-PIQ-94-06), particularly in light of the suggestion you made in your original letter dated April 29 regarding funding for vital statistics agencies. You suggested that a portion of the $20 payment per voluntary acknowledgment that is eligible for FFP should be payable to vital statistics agencies as well as hospitals. We believe that may be possible under the newly issued regulation.

The final Federal regulation implementing the paternity establishment provisions of the Omnibus Budget Reconciliation Act of 1993 (OBRA '93) were published on December 23, 1994 at 59 FR 66204. This regulation specifies the nature and extent of FFP for hospital-based paternity acknowledgment programs and related activities. The regulation provides FFP for payments of up to $20 to birthing hospitals (and other providers of prenatal and birthing services) for each voluntary acknowledgment obtained pursuant to an agreement with the IV-D agency. The regulation says that a hospital may spend this money any way it chooses (59 FR 66204, 66226). Therefore, a hospital may pay any part of the $20 payment to a vital statistics agency. The agreement between the hospital and the IV-D agency may address ways to ease the administrative burden on the hospital of making payments to a vital statistics agency. For example, the agreement may state that the IV-D agency, on behalf of the hospital, will pay the allocated portion of the payment directly to the vital statistics agency. In other respects, our policy regarding FFP for vital statistics agencies remains the same as stated in our July 12 letter (OCSE-PIQ-94-06) and the newly-published final regulation.

Regarding the availability of FFP for the collection of parents' Social Security Numbers as part of the birth registration process, the policy remains as stated in OCSE-AT-90-04. Use of IV-D funding for collecting the numbers would be inappropriate since birth registration is a general State function. However, as stated in OCSE-AT-90-04, FFP is available for the establishment of, and costs associated with, all necessary

agreements between State vital statistics agencies and IV-D agencies to request and transfer Social Security Numbers.

OCSE will continue to research and monitor these issues and take appropriate action to address any identified problems. I hope this information is useful. Thank you for your efforts on behalf of children.

Sincerely,

David Gray Ross
Deputy Director
Office of Child Support Enforcement

cc: Sharon M. Fujii, Regional Administrator, Region IX
John Kersey, Program Manager, Region IX
Direct Income Withholding under UIFSA

OCSE-PIQ-95-01

June 2, 1995

TO John Kersey, Program Manager
Child Support Enforcement Branch
Region IX

From: David Gray Ross
Deputy Director
Office of Child Support Enforcement

SUBJECT: Policy Guidance on Tribal Child Support Issues

This is in response to your memorandum of May 4, 1995, requesting guidance on issues raised by the Arizona IV-D program relating to a possible intergovernmental cooperative agreement between the State of Arizona and the Navajo Nation for the provision of IV-D child support services on the Navajo Nation.

QUESTION #1: May a cooperative agreement between a State and a Native American Tribe for the provision of title IV-D services specify that the Tribe may set child support award amounts using its own guidelines, rather than those of the State, provided that such Tribal guidelines conform to Federal IV-D requirements?

ANSWER: Yes. *OCSE-PIQ-89-13, Federal Funding on Indian Reservations* provides that "A cooperative agreement between the IV-D agency and a Tribal entity, in which the IV-D agency delegates any of the functions of the IV-D program to the Tribal entity, would have to meet the requirements for cooperative agreements described at 45 CFR 302.34 and 303.107. More specifically, the agreement must specify that, in accordance with 45 CFR 303.107(c), the Tribal entity will comply with title IV-D of the Act."

A Tribe may adopt a set of Tribal-specific child support guidelines to be used in setting and modifying all child support orders within the Tribe's sovereign jurisdiction, provided such guidelines meet all Title IV-D guideline requirements [section 467 of the Social Security Act (the Act) and 45 CFR 302.56], even if such guidelines are different from the guidelines adopted by the State. Having and using different guidelines for setting all child support orders within Tribal sovereign jurisdiction would not, in and of itself, render the State out of conformity with Title IV-D requirements, including the regulatory requirement that "...the State must establish one set of guidelines...."

Nothing in Federal law or regulations precludes a State from entering into a cooperative agreement with a Native American Tribe for delivery of IV-D services under which the Tribe operates a child support enforcement program on Tribal lands under laws and procedures which conform with title IV-D requirements, but which may be different from those adopted by

the State. For example, on December 13, 1993, the State of New Mexico and the Navajo Nation, a reservation which lies within the boundaries of three States, entered into a cooperative agreement for the provision of IV-D services on the New Mexico portion of the reservation. As part of this agreement, the Navajo Nation pledged that it would "comply with title IV-D of the Social Security Act, implementing regulations and any other applicable Federal regulations and requirements." However, the agreement also provides that in some cases Tribal law which is in compliance with IV-D requirements may not be the same as State law. As an illustration, the Navajo Nation recently adopted a comprehensive set of administrative procedures for the establishment of paternity and the establishment and enforcement of child support orders that, while designed to be in conformance with IV-D requirements, are different from New Mexico's quasi-judicial system.

Federal financial participation in the eligible costs of providing IV-D services under such a cooperative agreement would be available to the State. Such a cooperative arrangement would not be contrary to the "statewideness" requirements of title IV-D [section 454(1) of the Social Security Act] since the Tribe is a sovereign nation, is not a part of the State, and Indian children and parents are not subject to State law while they reside within the boundaries of the Tribal lands. Nonetheless, such children are entitled to child support enforcement services under Title IV-D.

In the case of the Navajo Nation, since the reservation lies within the boundries occupied by three States, it would be appropriate under Federal requirements for the Tribe to adopt one set of guidelines for the entire Reservation as long as those guidelines are in conformance with Federal requirements. In response to your inquiry, an Arizona\Navajo agreement may provide that the Navajo's may adopt the New Mexico guidelines, as interim guidelines, as is being done by the Navajo Nation under the New Mexico\Navajo cooperative agreement, pending any adoption of Navajo Nation guidelines.

In summary, Federal law and regulations under Title IV-D of the Social Security Act permit a State to establish cooperative arrangements which conform with title IV-D regulations. However, there is nothing in Title IV-D that requires a State to enter into a cooperative agreement that specifies that the Tribe may use its own laws, provided such laws conform to title IV-D. States have considerable flexibility in negotiating cooperative agreements with Tribal entities in circumstances which are suitable for such arrangements.

QUESTION #2: To what extent is Federal financial participation (FFP) available for the costs of establishing a cooperative agreement between a State and a Tribe?

ANSWER: In establishing an initial cooperative agreement for the

provision of Title IV-D program services on Tribal lands, certain "startup costs" such as the hiring of staff, leasing of space, leasing or purchase of equipment, and training of Tribal personnel on Title IV-D procedures and requirements may be eligible for FFP [see 45 CFR 304.20(b)(1)(iii) and (iv)]. Federal regulations at 45 CFR 304.21(d), provide that "FFP is available in IV-D costs incurred as of the first day of the calendar quarter in which a cooperative agreement or amendment is signed by parties sufficient to create a contractual arrangement under State law." The Navajo/New Mexico agreement also provided for a phased commitment of State/Federal funding beginning with the hiring of staff, leasing of space and equipment, and comprehensive training. Only when Tribal law was in compliance with IV-D requirments could funding for operational activities (i.e., the establishment of paternity, the establishment and enforcement of child support orders) take place.

It is the responsibility of the State to ensure that all cooperative agreements entered into, including those with Tribal entities, satisfy the requirements of 45 CFR 303.107. Among the enumerated requirements is a mandate that the agreement shall specify that the parties will comply with title IV-D of the Act, implementing Federal regulations and any other applicable Federal regulations and requirements. In OCSE-PIQ-89-13, which addresses Federal funding on Indian reservations, OCSE explained that "the [cooperative] agreement must specify that, in accordance with 45 CFR 303.107(c), the Tribal entity will comply with title IV-D of the Act."

Federal funding of a State's child support enforcement program under Title IV-D may not extend to, and may be disallowed for, any activities performed by the State or an entity operating the program in cooperation with a State (such as a Tribe under cooperative agreement) which were, or are, performed under a law or procedure which does not adhere to Title IV-D, or for which FFP is not available as set forth in 45 CFR 304.23.

In establishing a cooperative agreement with a Tribe for the provision of Title IV-D child support services to Indian children on Tribal lands, the State should insist that the agreement explicitly set forth all terms, procedures, laws, certifications, and other authority upon which the State may determine that the cooperating entity (Tribe) does comply with Title IV-D requirements, such that the State may satisfy the requirement of 45 CFR 303.107(c).

OCSE-PIQ-96-01

DATE: May 29, 1996

TO: ACF Regional Administrators
Regions I - X

FROM: David Gray Ross
Deputy Director
Office of Child Support Enforcement

SUBJECT: Handling of Disclosure and Timeframes in Cases of Statutory Rape

Attached is our response to an inquiry from the California Department of Social Services regarding disclosure of information and compliance with expedited processes timeframes in child support actions.

California inquired whether statutory rape meets the test for sexual abuse or exploitation in 45 CFR 303.21(a)(4) so that IV-D agencies may disclose known or suspected instances of statutory rape to appropriate State authorities. We responded that 45 CFR 303.21(a)(4) allows IV-D agencies to disclose such information where it appears that the child's health or welfare is currently threatened.

California also requested dispensation on a case by case basis from Federal expedited processes timeframes for child support cases involving statutory rape. We responded that the IV-D agency should try to meet the expedited processes timeframes. If the agency is unable to meet these timeframes due to criminal proceedings involving statutory rape cases, it should either exclude such cases subject to the expedited processes timeframes, or deduct, on a case by case basis, the time the case was delayed by the criminal proceeding from the computation of processing time for compliance with expedited processes timeframes. The IV-D agency must document the reason(s) for excluding the cases in both instances. In addition, cases delayed by a criminal proceeding are subject to Federal timeframes once the proceeding is concluded.

May 23, 1996

Ms. Eloise Anderson, Director
Department of Social Services
P.O. Box 94245
Sacramento, CA 94244-2450

Dear Ms. Anderson:

This is in response to your letter of April 22 regarding disclosure of information and disposition of paternity establishment and child support actions within specified timeframes in light of California's active prosecution of statutory rape cases.

First, you requested clarification whether statutory rape meets the test for sexual abuse or exploitation in 45 CFR 303.21(a)(4), the Federal safeguarding of information regulation. This section limits disclosure of information concerning IV-D applicants or recipients to certain cases including reporting to appropriate State agencies or officials (e.g. District Attorney's criminal division), information on known or suspected instances of physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment of a child who is the subject of a child enforcement activity under circumstances which indicate that the child's health or welfare is threatened. Because we believe that statutory rape falls within the definition of sexual abuse or exploitation as used in this section, IV-D agencies may disclose to appropriate State officials known or suspected instances of statutory rape where it appears as if the child's health or welfare is currently threatened.

Second, you ask for dispensation on a case by case basis from Federal timeframes for the disposition of paternity establishment and child support enforcement actions. Federal expedited process regulations at 45 CFR 303.101 require that 75 percent of the cases subject to expedited processes for a month reach disposition within six months of service of process and 90 percent within 12 months. As we explained in the preamble to the final regulation on expedited processes (59 FR 66234) while we believe that the timeframes are reasonable for the great majority of cases, the 90 percent standard recognizes that it may be difficult to meet the timeframes in certain cases, and IV-D agencies are allowed to exceed the timeframes in 10 percent of them. States should not however, dismiss cases simply to meet the timeframes.

Depending on the number of cases that California has involving both statutory rape and child support issues, the expedited process timeframes may not be problematic if the number of cases

that miss timeframes do not exceed 10% of the cases subject to such timeframes. If however, California will exceed the permissible 10% of cases that fail to meet timeframes as a result of statutory rape cases, you should consider the following alternatives. California should attempt to work these cases within the mandated timeframes. If the delay in a civil proceeding in a IV-D case caused by the criminal proceedings is such that the timeframes cannot be met, you should either exclude the case subject to the expedited processes timeframes, or deduct the time the case was delayed by the criminal proceedings from the computation of processing time for compliance with expedited processes timeframes. In either situation, the State must document the reason(s) for excluding each case. In addition, cases delayed by a criminal proceeding are subject to Federal timeframes once the proceeding is concluded.

Thank you for your work on behalf of California's children.

Sincerely,

David Gray Ross
Deputy Director
Office of Child Support
Enforcement

cc: Sharon M. Fujii
Regional Administrator
Administration for Children and Families

OCSE-PIQ-96-02

Date: June 21, 1996

To: Vince Herberholt
Child Support Team Leader
OCSE, Region X

From: David Gray Ross
Deputy Director
Office of Child Support Enforcement

Subject: Vacating Administrative Default Orders

This is in response to your May 22 letter forwarding Alaska's question seeking a policy interpretation concerning vacating of administrative default child support orders. Alaska has issued many default orders to obligors located in rural areas who have little income and little understanding of child support procedures. These orders are mostly uncollectible so Alaska desires to adjust them to reflect obligors' actual ability to pay. They recently amended an Alaska statute which allows the State IV-D agency to vacate an administrative support order issued by the agency based on default amount rather than actual ability to pay. Currently, a court can set aside a judicial order based, among other things, on the party's mistake, inadvertence, surprise or excusable neglect. Once an order is set aside, it is treated as if it never existed. Alaska's inquiry and our response is as follows:

Question: Would vacating of an administrative default order as authorized by amended Alaska statute 25.27.195 comply with the prohibition against retroactive modification in the Bradley Bill and regulations for review and adjustment?

Response: Nothing in the Federal statutory requirements for retroactive modification (implementing the Bradley Bill) [42 USC 666(a)(9)] and review and adjustment of child support orders in IV-D cases [42 USC 666(a)(10)], and implementing regulations at 45 CFR 303.107 and 303.8 respectively, prohibits the State from vacating an administrative default order, in accordance with State law. In the final regulation on retroactive modification of support orders (54 FR 15762), several commenters objected to the prohibition of retroactive modification of support orders because they believed that it prevented the obligor from

challenging improperly calculated arrearages. We responded that, "Federal law and regulations do not prohibit the correction of improperly calculated arrearages; the IV-D agency, judiciary or administrative authority may correct any improperly calculated arrearages." We believe that administrative and judicial orders, in most respects, should be accorded similar treatment.

Therefore, the vacating of a support order under the amended Alaska statute appears to be "a correction of improperly calculated arrears."

Under Federal law 42 USC 667 and regulations at 45 CFR 302.56, State guidelines must be used for setting and modifying child support awards. In cases where either the noncustodial parent cannot be found or sufficient information cannot be obtained to use the child support guidelines, the State may issue a default order in accordance with State law.

When information that is needed to apply State guidelines becomes available, and the family is on AFDC or the child is receiving title IV-E foster care and all support arrearages are owed to the State, a State may vacate the default order and establish an order using State child support enforcement guidelines. In non-AFDC cases, the custodial parent as a party must agree to vacate the default order and establish an order using State child support enforcement guidelines. This may include both the obligation of current support and a child support judgment. The amended Alaska statute merely involves vacating a default order so that the IV-D agency can establish a support order in accordance with the State child support enforcement guidelines. Unlike default orders, support orders and judgments established using the State's guidelines take into consideration the income and assets of the noncustodial parent or both parents.

I hope this information is helpful in responding to Alaska's inquiry.

cc: ACF Regional Administrators
Regions I - IX

OCSE-PIQ-96-03

Date: May 1996

To: Judy Ogliore
OCSE Program Assistant
Region X

From: David Gray Ross
Deputy Director
Office of Child Support Enforcement

Subject: Longshoreman Harbor Workers Compensation Act (LHWCA) benefits

This is in response to your May 21 letter forwarding Washington's question seeking a policy interpretation concerning attaching Longshoreman Harbor Workers Compensation Act benefits. Washington's inquiry and our response is as follows:

Question: Are Longshoreman Harbor Workers Compensation Act (LHWCA) benefits, paid by a self-insured entity or a private insurer, subject to attachment for the payment of a child support obligation?

Response: In checking with the Office of Personnel Management (OPM) which has jurisdiction over the Federal Garnishment Regulations at 5 CFR Part 581 and the U. S. Department of Labor which has jurisdiction over LHWCA, we have learned that under Section 16 of the LHWCA that benefits being provided by a self-insured entity or a private insurer are not subject to garnishment.

In 1991, OPM published in the Federal Register revisions to 5 CFR Part 581 which specified that LHWCA benefits are subject to garnishment. In discussing this matter with OPM legal staff, we learned that the revision to 5 CFR 581.103 was only intended to apply to benefits paid by the Federal Government. Therefore, under this provision, LHWCA benefits provided by a self-insured entity or a private insurer are not subject to garnishment.

I hope this information is helpful in responding to Washington's inquiry.

cc: ACF Regional Administrators
Regions I - IX

OCSE-PIQ-97-01

March 9, 1997

TO: CSE Program Managers

FROM: David Gray Ross/s/
Deputy Director
Office of Child Support Enforcement

SUBJECT: Conditions of Linkage of Local Disbursement Units Under Welfare Reform

We have received numerous inquiries regarding implementation of the new welfare reform provisions for centralized collection and disbursement in states where the responsibility currently lies with county clerks for receipt of income withholding checks in child support cases. The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) section 312, as codified at 42 U.S.C. §654B, mandates that, by October 1, 1998, the States operate central units for the collection and disbursement of child support. Many States have been operating such centralized units successfully for years, while several States operate under a system in which collections are made by the county clerks. Section 312(d)(2) of PRWORA allows those States which currently process child support payments through the local courts to delay their compliance with this section until October 1, 1999.

The new law also allows a State to request a waiver to link localized disbursement units through an automated network, provided that it can show that such a system "will not cost more nor take more time to establish or operate than a centralized system." The Secretary of DHHS must agree with the State's cost/benefit analysis. Even if a State is granted such a waiver, employers who are sent notices requiring wage withholding must still be provided one location to which the money will be sent.

A State could submit a request for a waiver to link local disbursement units for collections <u>other</u> than those made through wage withholding, *provided that it is not more expensive nor more time-consuming to establish or operate than a centralized system.* Proof of this will need to be made by the State. Our office is in the process of developing standards and procedures for requesting waivers and will distribute them as soon as they are complete. It is important to keep in mind, however, that even if a State should be granted a waiver to link its local systems, the wage withholding payments would still need to be collected centrally.

Treatment of Distributed/Uncashed Payments

OCSE-PIQ-97-02

Date: April 24, 1997

To: Robert L. Richie
Program Manager
OCSE, Region IV

From: Anne F. Donovan /s/
Acting Deputy Director
Office of Child Support
Enforcement

Subject: Treatment of Distributed/Uncashed Payments to the Family (Kentucky)

We have reviewed Kentucky's letter and draft procedures addressed to your office on the treatment of distributed and uncashed payments to the custodial parent/family. This response has been cleared by Audit and the Office of General Counsel.

While in general we believe that Kentucky's proposal has merit, there is one major problem. The proposed application of the money to any existing AFDC/TANF arrearage does not comply with the requirements of Federal law. This money has been distributed to the family (although the Postal Service returned the money to the IV-D program). Nevertheless, it lawfully belongs to the family. As such, it cannot be used to reimburse the AFDC/TANF programs for unreimbursed assistance.

Kentucky indicated that it is not aware of any Federal regulations addressing the treatment of monies in this situation. Provisions at former 45 CFR 74.41(a) defined "program income" and is cited in PIQ-90-02. This definition has been replaced by 45 CFR 74.2. Provisions at 45 CFR 74.24(b) set forth three permissible options for the treatment of program income, but indicate that the option chosen must be in accordance with the terms of the grant. The provisions of 45 CFR 304.50 require that program income be deducted from program expenditures, thus requiring the use of the option set forth in 45 CFR 74.24(b)(3).

When a distributed payment to the family is uncashed and returned, States hold these payments for a specified period of time pursuant to State procedures during which time efforts are made to locate the family. If the efforts prove to be unsuccessful upon completion of this period, States can either return the monies to the noncustodial parent or transfer the monies to the State agency designated to receive such funds.

Kentucky expressed concerns with transferring these monies to an agency outside of the IV-D agency. Federal policy does not require that the funds be transferred to a particular State agency, only that the funds be handled in accordance with State

law. Thus, as long as it were authorized under State law, it would be acceptable from a Federal standpoint if the monies were transferred to an account within the Kentucky Automated Support Enforcement System provided that once the payee is located, the State has the ability to reverse the transaction as described in PIQ-90-02.

I hope this information is helpful in responding to Kentucky's inquiry.

OCSE-PIQ-97-03

Date: May 20, 1997

To: Barbara Addison, Chief
Office of Audit Support

From: Anne F. Donovan /s/
Acting Deputy Director
Office of Child Support
Enforcement

We have reviewed Jamie Roussel's memorandum to you expressing Colorado's request for changes to policy or regulations which would render allowable the State's claims for reimbursement for "losses" incurred due to IRS adjustments to offset collections, and noncustodial parent's checks found to have insufficient funds.

As noted in Jamie Roussel's memorandum, OMB Circular A-87, Attachment B, Section 7, does not permit claims for losses from uncollectible accounts unless specifically provided for in program regulations. This provision of OMB Circular A-87 addresses both losses Colorado is including in its claims for Federal financial participation (FFP). They include (1) losses due to obligor checks found to have insufficient funds, and (2) losses due to IRS adjustments to offset collections. Since OCSE does not have regulations allowing Federal matches for losses, this provision of OMB Circular A-87 precludes Federal funding for the losses in both situations. The provision on losses due to obligor checks determined to have insufficient funds is clear. However, the issue of losses due to IRS adjustments warrants further explanation.

In our review of the preamble to the final rule implementing the Child Support Enforcement Amendments of 1984 and published in the Federal Register on May 9, 1985, we found several references to "erroneous" payments relating to the collection of support from Federal income tax refunds and for which a clarification has been requested. The first such reference is found under the heading COLLECTION OF PAST-DUE SUPPORT FROM FEDERAL INCOME TAX REFUNDS at 50 FR 19617 as follows: "OMB Circular A-87 (Cost Principles for State and Local Governments-Attachment B, Section D(1), precludes

Federal funding for any loss arising from uncollectible accounts and other claims, and related costs. In addition section 1102 of the Act requires the Secretary to establish rules necessary for efficient administration of the program. Therefore, costs incurred by States as a result of tax refund offset payments to individuals which are subsequently determined to be ERRONEOUS and which the State is unable to recoup from the individual may not be claimed as administrative costs under the IV-D program as these are not appropriate expenditures for which Federal funding

is available."

The second reference is found in the preamble under the heading of COMPLAINT PROCEDURES at 50 FR 19636 and 19637 as follows: "There may be cases in which an unobligated spouse files for a portion of the refund and the State is unaware of this. The IRS may process the refund at the same time or after the State refunds the excess to the parties filing the joint return. In this case, the State must recover the excess amount refunded. Federal funding is not available for these ERRONEOUS payments but is available for the administrative costs of attempting to recover them."

The third reference is found under the heading STATE AND LOCAL DEBTS RESULTING FROM ERRONEOUS PAYMENTS at 50 FR 19637 as follows: "Many commenters requested that we make Federal funding available for amounts offset that are distributed to the family or refunded to the taxpayer and later adjusted by the IRS, if the State cannot recover them. Adjustments made by the IRS on amounts offset and sent to the State are not subject to Federal funding under 45 CFR 304.20. OMB Circular A-87 precludes Federal funding for any loss arising from uncollectible accounts and other claims and related costs. However, funding is available for administrative costs of recovering or attempting to recover these amounts."

We believe that all citations, and especially the last one noted, do not limit "erroneous" payments only to payments that were received as a result of an offset against the wrong noncustodial parent or sent to the wrong custodial parent as the State contends. If there were any doubts on what constitutes "erroneous" payments with respect to offset refunds, the preamble language under the last heading noted, STATE AND LOCAL DEBTS RESULTING FROM ERRONEOUS PAYMENTS, removes such doubts in the statement indicating that "OMB Circular A-87 precludes Federal funding for ANY (emphasis added) loss arising from uncollectible accounts and other claims and related costs."

We hope this responds and clarifies the term "erroneous" within the context of the Federal income tax refund or offset practice. There is no current authority to allow claims for reimbursement for "losses" sustained by States due to IRS adjustments to offset collections or noncustodial parents's checks found to have insufficient funds.

With respect to the problem of noncustodial parents checks found to have insufficient funds, instituting an electronic funds transfer (EFT) procedure from the noncustodial parent to the IV-D agency may help. An EFT system is not only a more efficient method of transferring funds, it also serves to prevent "losses" such as those noted by the State in this case since funds cannot be transferred from an account with insufficient funds. Several States have already instituted this procedure. It is also consistent with the strong encouragement by the Federal

government for the electronic transfer of funds for benefits and for other similar purposes
such as for the collection and distribution of child support funds.

If we can be of any further assistance please let us know.

OCSE-PIQ-97-04

Date: July 7, 1997

To: Joanne Krudys
Child Support Program Manager
OCSE, Region II

From: David G. Ross /s/
Deputy Director
Office of Child Support Enforcement

Subject: Paternity Establishment Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996

This is in response to your April 30 letter forwarding New Jersey's questions and seeking policy interpretations concerning paternity establishment. New Jersey's inquiries and our response are as follows:

Question #1: Is it necessary to request an exemption from the requirement under section 466(a)(5)(M) of the Social Security Act (the Act) as added by section 331(a) of P.L. 104-193 that acknowledgements and adjudications of paternity are to be filed with the State registry of birth records? Or, does the State's current process, which utilizes a private vendor in lieu of the State registry of birth records, comply with the intent of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA)?

Response: If the State wishes to maintain its current process, an exemption would be necessary. However, if the current process were slightly modified, it would comply with the requirements of section 466(a)(5)(M) of the Act. The contractor must send the State registry of birth records an electronic copy of all paternity acknowledgements or adjudications. The registry of birth records could use this copy to record the father's name on the record of birth to meet the requirements of section 466(a)(5)(D) of the Act. The contractor must also provide the State registry of birth records access to the data file it maintains of paternity acknowledgments and adjudications. If these steps are followed, we believe the State's procedures will be in compliance with the requirements of sections 466(a)(5)(D) and (M) of the Act.

Question #2: Under section 452(a)(7) of the Act as amended by section 331(b) of P.L. 104-193, the social security number of each parent is a minimum requirement of an affidavit to be used for voluntary paternity acknowledgment. Since the State has identified various categories of individuals that have not applied for and have not obtained a social security number, does this preclude them from establishing paternity using the paternity acknowledgement affidavit? If so, is it necessary for

the State to request an exemption from this requirement to obtain voluntary paternity acknowledgements from those individuals who do not have a social security number?

Response: No. The statute specifies that the social security number of each parent is one of the minimum requirements of an affidavit to be used for the voluntary acknowledgment of paternity. However, the omission of one or both of the social security numbers does not invalidate the acknowledgment. The definition of what data elements must be included as minimum elements in an affidavit in order for a voluntary paternity acknowledgment to be valid is State specific. It must be kept in mind that a State's interpretation of what is a valid paternity acknowledgement affidavit binds other States and must be given full faith and credit.

I hope this information is helpful to you in responding to New Jersey's inquiries. If you have any questions, please contact Jan Rothstein of my staff at (202) 401-5073.

cc: ACF Regional Administrators
Regions I and III – X

OCSE-PIQ-98-02

DATE: May 18, 1998

TO: ACF Regional Program Managers

FROM: David Gray Ross
Commissioner
Office of Child Support Enforcement

RE: Direct Court Access to FPLS

Following is a PIQ which responds to a letter received from Arizona regarding their court clerks' request for direct access to FPLS information. The issues raised in Arizona's inquiry are discussed in the PIQ.

Question: The Clerk of the Court has requested direct access to information contained in databases maintained by the United States Department of Health and Human Services (DHHS).

Answer: In general, the policy issues raised by your request pertain to the right to access to child support information under Title IV-D of the Social Security Act (the Act), as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) (P.L. 104-193). Congress has given specific statutory authority for the IV-D program to have access to a wide variety of information sources for purposes of enforcing child support obligations. Congress has also specified, in detail, the privacy requirements that come with this access and prohibited the unauthorized disclosure of child support data. The Office of Child Support Enforcement (OCSE) takes this responsibility very seriously. Because of the sensitive nature of the data needed to process and enforce child support cases, we are committed to ensuring that all uses and disclosures of State and Federal data sources on individuals comply with the highest standards for security and confidentiality.

Providing direct access to Federal databases to outside entities that are not part of the IV-D program, whether these outside entities are State Clerks of Courts or other entities, makes it much more difficult to ensure the confidentiality of the data. State IV-D agencies do not have management or contractual control over these outside entities and therefore cannot adequately ensure that the requisite privacy safeguards are adhered to rigorously. Even with the best of intentions, sensitive data could be compromised if State IV-D agencies with the responsibility to protect the confidentiality of data do not have the requisite control over the data once it leaves the IV-D agency.

In addition, there are broad policy concerns relating to the long term success of the IV-D programs that are involved. Since the early days of the program Congress has required State IV-D

programs to provide services for all child support eligible families that apply for such assistance. All of the services that the Clerks of Court have requested for non-IV-D cases are available through the State IV-D agency. A parent simply has to make an application to receive IV-D services. Providing duplicative services through another entity would increase the fragmentation of the child support program and blur the distinction between IV-D cases and non-IV-D cases.

Providing duplicative services would also increase IV-D program costs. For instance, the access that the Clerks of Court have requested would require building an interface with the IV-D certified computer system. The additional use would increase the volume and batch times for processing. There would be additional central processing units costs as well as costs for reports and maintenance.

In addition, providing duplicative services could negatively impact on the child support incentives money paid to the State. States receive incentives only for collections through the IV-D program. When money is collected through the Clerk of Courts for non-IV-D cases, those collections are not counted in the collection base for purposes of incentives. Therefore the State could spend significant additional money to provide duplicative services and not receive incentive money for the collections.

The specific issues raised by the Clerk of the Superior Court and the responses follow:

Issue 1: On-line access to state locate sources that are available, such as unemployment insurance quarterly employer and wage reports.

Response: Direct on line access to State locate sources that are not part of the IV-D system, such as access to unemployment insurance quarterly employer and wage reports through the State Employment and Security Agency, are controlled by Federal Department of Labor laws and regulations and/or State law. On-line access to State locate sources through the IV-D automated system is restricted by the Social Security Act, as amended by PRWORA. Specifically, section 454A(d) of the Act restricts access to the automated system to State IV-D personnel: "The State agency shall have in effect safeguards on the integrity, accuracy, and completeness of . . . . data in the automated system." Among the safeguards required of the State are written policies which permit access to and use of data only to the extent necessary to carry out the IV-D program, systems controls to ensure adherence to those policies, training in security procedures of personnel who have access to the data or may use the data, and penalties for unauthorized access to, or disclosure of, confidential data.

Issue 2: Tape submission to FPLS (Federal Parent Locator Service), as well as for IRS (Internal Revenue Service) and DOR

(Department of Revenue) tax offsets.

Response: Tape submission to the FPLS for an IRS offset is prohibited by section 453 of the Social Security Act, as amended by PRWORA. Under section 453(a), only the Secretary of DHHS under the direction of her designee is authorized to obtain and transmit information from the FPLS.

Section 453(m) of the Act requires the Secretary of Health and Human Services to establish and implement safeguards designed to "restrict access to confidential information in the Federal Parent Locator Service to authorized persons, and restrict use of such information to authorized purposes."

Section 453(i) of the Act outlines the purposes of the National Directory of New Hires. Under this provision the Directory is designed to assist States in administering programs under State plans approved under title IV-D of the Act and programs funded under part A of the Act, and for other purposes as specified. The "other purposes" include the administration of Federal tax and Social Security laws and verification of information by the Social Security Administration.

Section 453(j) of the Act specifies the information comparisons and other disclosures allowed by the FPLS. These are limited to verifications by the Social Security Administration, New Hire Directory comparisons, limited research purposes (without personal identifiers) and for certain Title IV program purposes, "To the extent and with the frequency that the Secretary determines to be effective in assisting States to carry out their responsibilities under programs operated under this part and programs operated under part A . . .".

Section 453(l) of the Act provides that, "information in the Federal Parent Locator Service, and information resulting from comparisons using such information, shall not be used or disclosed except as expressly provided in this section, subject to section 6103 of the Internal Revenue code of 1986."

Federal law governing tax offsets also specifically prohibits tape submission to the IRS by non-IV-D entities. Tax offsets are governed by section 464 of the Act. Section 464 applies only to tax offsets submitted for IV-D cases (see section 454(4) -- for non-welfare cases, only if the individual applies for IV-D services.) In addition, the Internal Revenue Code, 26 U.S.C.S § 6103(l)(6), provides for the disclosure of certain return information to IV-D agencies but it specifically provides access only to IV-D cases. Moreover, disclosure of information is expressly limited "for purposes of, and to the extent necessary in, establishing and collecting child support obligations from, and locating, individuals owing such obligations." 26 U.S.C. § 6103(l)(6)(C).

Tape submissions to the State Department of Revenue for purposes

of offsetting against a State tax refund would generally be governed by State law.

Issue 3: Access to 1099's for self-employment and federal workers.

Response: This is prohibited by Federal law. See the Answer to Issue 2 above.

Issue 4: Access to any state registries that will be created pursuant to the Welfare Reform Act.

Response: This is prohibited. See the answer to Issue 1 above.

Issue 5: Placement of non-IV-D cases on the State IV-D automated system to enable the Clerk of the Superior Court's staff to perform active case management, including the receipt of special reports and work lists.

Response: This is prohibited. See answer to Issue 1 above.

Issue 6: Cooperation between our respective information technology groups to facilitate the transfer and interface of information.

Response: Cooperation is encouraged subject to the restrictions outlined above.

If you need further information or have further questions or concerns, please do not hesitate to contact the Federal Office of Child Support Enforcement again.

OCSE-PIQ-98-03

DATE: June 15, 1998

TO: Dennis Barton
Region VIII

FROM: David Gray Ross /s/
Commissioner
Office of Child Support Enforcement

RE: FFP Under Title IV-D of the Social Security Act (the Act) for Work Activities for Non-Custodial Parents (NCP)

Question: If an individual who is a NCP in a TANF case is ordered to participate in a work activity, either through a court order or by an administrative order, is federal financial participation (FFP) available under title IV-D of the Act to pay the work activities? Is FFP under title IV-D of the Act available to pay for work activity costs for a noncustodial parent who wishes to volunteer for a work activity?

Answer: The State is required under section 466(a)(15) of the Act to have procedures under which the State has the authority to order an able-bodied NCP in a TANF case to participate in work activities. (The cross cite is to the work activities defined in section 407(d) of the Act, which is under Title IV-A.) Section 466(a)(15) does not require that IV-D programs establish, provide, or administer work activity programs for NCPs. Therefore, participation in work activities is not a cost attributable to administering or operating the IV-D Program. Under 45 CFR section 304.23(d), FFP is not available for education and training programs and educational services except short-term training of IV-D staff. Additionally, if a NCP participates in work activities provided under Title IV-A, 45 CFR section 304.23(a) provides that no FFP under title IV-D is available for administering IV-A programs. These provisions mean that no FFP is available for work training programs for NCPs, whether ordered or voluntary. Referral by IV-D staff of NCPs under such an order to such programs is an allowable IV-D activity.

I hope that this addresses your concerns.

cc: Regional Program Managers
Direct court Access to FPLS

OCSE-PIQ–99-01

DATE: January 14, 1999

TO: Regional Program Managers

FROM: David Gray Ross
Commissioner
Office of Child Support Enforcement

RE: Direct Application for Title IV-D Services from International Residents

Question: Are States required to provide child support enforcement services to individuals who reside in a foreign country and who apply directly to the State for paternity or support enforcement services?

Answer: Yes. Section 454(4)(A)(ii) of the Social Security Act (the Act) imposes a literal requirement that State agencies must provide Title IV-D services to anyone who has filed a proper application for services with the agency.

Section 454(6)(A) of the Act states that "services under the plan shall be made available to residents of other States on the same terms as to residents of the State submitting the plan." This provision makes it clear, in the interstate context, that services must be provided to anyone who applies. OCSE has consistently interpreted the language now found under section 454(4)(A)(ii) as imposing no residency or citizenship requirement as a precondition for Title IV-D services under the Act. See DCL 98-80 and DCL 94-45. Section 454(4)(A)(ii) of the Act thus continues to require that services be provided to anyone who applies, regardless of nationality, just as section 454(6)(A) makes this principle explicit in the interstate context.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) amended the Act by adding section 459A, which provides authorization to the Federal government to declare foreign countries to be “reciprocating countries,” and to enter into international agreements with such countries. The section, however, also allows States to continue existing reciprocity agreements they may have with foreign countries and to enter into new reciprocal agreements with foreign governments which have not been declared reciprocating countries under Federal law. Under the authority noted above, States may also continue to provide services to U.S. citizens living abroad and to non-resident aliens who apply (or have applied) directly to the State for child support enforcement services.

Prior to PRWORA, reciprocal agreements between States and foreign jurisdictions were not specifically encompassed under any provision of title IV-D of the Act. Neither the Act nor IV-D regulations specifically provided for the provision of services

for incoming international cases based solely on reciprocity arrangements negotiated independently by State agencies. OCSE policy, however, has long recognized that there are no constraints within the Act prohibiting individuals in foreign countries from filing a signed application for services in accordance with sections 302.33(a)(i) and 303.2(a)(2) and (3) of the regulations. Consequently, States were free to negotiate international arrangements whereby the foreign country would facilitate securing the applications for services from individuals and forwarding them to the State for provision of services. See PIQ 92-06. Many cases are currently being worked under these prior arrangements, or by direct application of individuals in foreign countries to the State where the obligor resides, and IV-D agencies should continue to work these cases until such time as the originating country is declared a foreign reciprocating country.

I hope this addresses your concerns.

OCSE-PIQ-99-02

DATE: February 8, 1999

TO: All State IV-D Directors

FROM: David Gray Ross
Commissioner
Office of Child Support Enforcement

SUBJECT: Order/Notice to Withhold Income For Child Support

This is in response to inquiries for clarification of the use of the standardized form required by section 324 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193) which amended section 452(a)(11) of the Social Security Act. The form was issued January 27, 1998 by OCSE-AT-9803.

Question 1: Does the Federal Order/Notice to Withhold Form provide adequate notice/due process protection for all States?

Response: No. The Federal form is not intended to provide full due process notice since that is strictly a matter of State law. Therefore, employers should be aware that upon receipt of the Standard Order/Notice to withhold, they are to implement it in accordance with the appropriate State due process laws.

Due Process requirements are a matter of State law, not Federal IV-D law/regulation. Federal law provides that the Standard Order/Notice to Withhold must be used in accordance with all appropriate State due process requirements. Since State due process laws apply to all cases, IV-D or non-IV-D, it is then up to the States to ensure that all employers are aware of, and follow these laws. Section 502 of UIFSA specifies that the law of the issuing State applies except in specific instances noted in section 502(d) where the law of the State of the obligor's principal place of employment applies.

Question 2: Must the Federal form be used in all cases (IV-D /non-IV-D, and interstate/intrastate)?

Response: Yes. The Federal form must be used in all cases, including IV-D, non-IV-D, interstate and intrastate. Use for non-IV-D is effective after 1/1/94 (section 466(a)(8)(B) of the

Act). Section 466(b)(6)(A)(ii) requires that the form prescribed by the Secretary must be used in IV-D cases to notify employers of an order to withhold. This requirement applies to both interstate and intrastate cases. Similarly, section 466(a)(8)(B)(iii) requires that the same forms must be used in non-IV-D cases, both interstate and intrastate.

Question 3: Does Federal law require that withholding be carried out administratively in all cases -- IV-D and non-IV-D?

Response: No. Section 466(a)(2) of the Act only specifies that withholding be done administratively in IV-D cases.

Question 4: May a State require that a court/administrative officer sign the form in non-IV-D cases?

Response: Yes. While the standard form must be used in all cases, it is permissible for States to have laws requiring that a court/administrative officer in non-IV-D cases sign the Notice. If a signature is required on the form in non-IV-D cases, lines 28(a) and (b) serve that function. However, it should be noted that, if a Notice to Withhold is received by an employer in a State requiring judicial/administrative signature from a State that does not require such signature (i.e., withholding is done administratively in all cases), the employer in the "receiving" State must honor the request for withholding without a judicial or administrative officer's signature.

Question 5: Is the Federal Standard Order/Notice to Withhold actually an Order or is it a
Notice to employers to withhold?

Response: It is both a notice to the employer and an order to which the employer must comply. Federal law requires that all IV-D orders and those non-IV-D orders issued after 1/1/94 must contain provisions for withholding. The Order/Notice is meant to both notify the employer of the withholding requirement in a judicial or administrative support order as well as compel the employer to comply. In addition, no employer may require that the State IV-D agency or agent of the court provide a copy of the actual support order, nor may they require that the Notice to withhold be served via certified, or any other special type of mail (see DCL-98-107).

Question 6: Who is authorized to serve or issue this form to an obligor's employer other than a IV-D agency?

Response: Formal service of the Notice is not required; anyone may transmit the Notice to the employer. Comments to Section 501 of UIFSA state, "...the Act does not restrict who may send an income withholding order across state lines. Although the sender will ordinarily be a child support enforcement agency or the obligee, the obligor or any other person may supply an employer with the income withholding order...Therefore, receipt of a copy of a withholding order by facsimile, regular first class mail, registered or certified mail, or any other type of direct notice is sufficient to provide the requisite notice to trigger direct income withholding in the

absence of a contest by the employee-obligor." In States where a

signature is not required, an individual may obtain the Federal form from the IV-D office for submission to the employer. See question 4 for additional information.

cc: ACF Regional Administrators
Regions I - X

To: IV-D Directors

From: David Gray Ross
Commissioner
Office of Child Support
Enforcement

Subject: Public Policy Supporting Two Parent Families

Attached please find PIQ-99- 03 clarifying Federal policy regarding compromise of arrearages. This issue has received growing attention in the context of parents who marry or remarry and are faced with payment of large child support arrearage amounts.

It is important that we create policies that encourage the formation of two-parent households. While many single parents are successful in raising children in a single parent household, there is growing evidence that children who grow up in two parent households are less likely to be poor, less likely to become teen parents, less likely to have contact with the criminal justice system, and more likely to graduate from high school.

Currently in most States, even if the parents marry or remarry, families with TANF arrearages are required to make payments to the State as a result of the TANF requirement of assigning child support payments. This can worsen the economic situation for low-income families, thereby reducing their ability to maintain a self-sufficient two-parent household.

States such as Washington and Vermont have taken steps to help such families through their policies regarding arrearages. Washington State statute and administrative rules allow certain child support debts to be forgiven if the custodial parent and the noncustodial parent reunite. The process is managed through a “conference board” proceeding in which child support attorneys and staff review the case to determine whether the support debt creates a hardship. This process has been a useful tool to assist reconciled or remarried parents with financial difficulties. Vermont’s State code allows it to suspend collection of arrears in public assistance cases when the custodial parent and noncustodial parent reunite, if the reunited family has a gross income less than 225 percent of poverty. The State arrears are reduced to a lump sum judgment but that judgment is not enforced if the parents meet the threshold poverty level and remain united.

We encourage States to examine Washington and Vermont’s practices in this regard, and adopt State policies that help to encourage strong family formation.

OCSE-PIQ-99-03

DATE: March 22, 1999

TO: State IV-D Directors

FROM: David Gray Ross
Commissioner
Office of Child Support Enforcement

RE: Compromise of Child Support Arrearages

Question 1: Is there authority for States to accept less than the full payment of assigned child support arrearages?

Response: Yes. A State could accept less than the full payment of arrearages assigned to the State on the same grounds that exist for compromise and settlement of any other judgment in the State.

We articulated this position in PIQ-89-02 issued on February 14, 1989 and later in the preamble to final regulations at 45 CFR 303.106 pertaining to AProcedures to Prohibit Retroactive Modifications of Child Support Arrearages@ which was published in the Federal Register on April 19, 1989 (54 FR 15764). Federal law at section 466(a)(9) of the Social Security Act (the Act) and implementing regulations at 45 CFR 302.70(a)(9) provide that child support is a judgment on and after the date due with the full force, effect and attributes of a judgment of the State, and not subject to retroactive modification. Such support judgments may, however, be compromised or satisfied by specific agreement of the parties on the same grounds as exist for any other judgment in the State. Judgments involving child support arrearages assigned to the State under titles IV-A, IV-E and XIX of the Act, may not be compromised by an agreement between the obligee and obligor unless the State, as assignee, also approves such an agreement. State law may further require that the court or administrative authority must endorse any agreement affecting child support orders to ensure that the best interests of the child are protected.

We encourage caution not to confuse compromising arrearages with the statutory prohibition against retroactive modification of arrearages. The State plan requirement at section 454(20) of the Act requires States to enact laws that implement statutorily required procedures found at section 466 of the Act. Thus States must have laws that provide that child support payments become a judgment by operation of law and prohibit retroactive modification of arrearages. Retroactive modification of arrearages occurs when a court or administrative body takes actions to erase or reduce arrearages that have accrued under a

court or administrative order for support. In effect, retroactive modification of arrearages alters the obligor=s obligation without the concurrence of the obligee (or the State assignee) and is expressly prohibited by section 466(a)(9)(C) of the Act and 45 CFR 303.106.

Question 2: Would accepting a reduced payment for assigned child support arrearages violate existing Federal distribution law that requires sharing any assigned child support collections with the Federal government?

Response: No. Federal law does not prohibit State (or private) settlement of a judgment obligation, consistent with State law governing settlement of any other money judgment. While an agreement to compromise or settle the amount owed under the judgment and assigned to the State affects the amount payable for reimbursement to the Federal government, the Federal interest is contingent upon the State=s collection of the debt. The Federal interest does not vest until support is available for distribution. Any amount collected under the judgment must be distributed in accordance with section 457 of the Act.

Some States have given consideration to compromise of arrearages when the custodial parent and the noncustodial parent marry or reunite (if they have been legally separated). For example, Washington State statute and administrative rules allow certain child support debts to be Awritten off@ (RCW 74.20A.220,WAC 388-14-385). The process is managed through a “conference board” proceeding in which a Division of Child Support (DCS) attorney and one or more other DCS staff members review the case to determine whether the support debt creates a hardship. Generally the Conference Board bases the hardship determination on a comparison of the family income to the State needs standard for the family size. This process has been a useful tool to assist reconciled or remarried parents with financial difficulties. DCS is careful not to use this remedy in such a way that it would encourage domestic violence or coercion.

There may be other circumstances that warrant consideration of compromising arrearages in accordance with State law. However, States should use caution not to send a message that obligors can ignore support obligations because of the possibility that the State may eventually accept less than the full amount owed in satisfaction of the debt.

We hope this information will prove helpful.

OCSE-PIQ-99-04

DATE: March 22, 1999

TO: State IV-D Directors
Regional Program Managers

FROM: David Gray Ross
Commissioner
Office of Child Support Enforcement

SUBJECT: Direct Unemployment Compensation Intercepts

Over the last couple of months we have had some confusion over the issue of direct income withholding from unemployment compensation (UC) benefits across State lines. We have had two requests for assistance and clarification on this issue from two different States, as follows:

1. Are State Employment Security Agencies (SESAs) required to process UC intercepts from States other than their own?

Answer: Yes. If the State UI agency is encompassed by the definition of "employer" within section 501 of the Uniform Interstate Family Support Act (UIFSA) as enacted by the receiving state, an income withholding order may be sent directly to the UI agency since it is "the person or entity defined as the obligor's employer under [the income withholding laws of the State]...". Withholding for UI benefits is also governed by sections 303(e) and 454(a)(19) of the Social Security Act (the Act). Under these sections there are requirements for reimbursement of SESA costs, as addressed in question 2.

2. If they do process these intercepts, who pays for them and how?

Answer: Under section 303(e)(2)(C) of the Act, the State or local IV-D agency must reimburse the SESA for administrative costs attributable to child support obligation payments. The Department of Labor requires (in UIPL no. 1-82) that the SESA have a fee agreement in place before performing any intercepts. No intercept can be performed until there is a fee agreement with the State or local IV-D agency which is requesting the intercept.

No State has fee agreements with all other States' SESAs for reimbursement, so there are two options for State IV-D agencies who wish to do direct UC intercepts:

- **The State IV-D agency may sign an agreement with each State or specific States' SESA for reimbursement.** This would satisfy the requirements of section 303(e)(2)(C) of the Act and UIPL no. 1-82.

- **IV-D agencies may send intercepts through the other State's IV-D agency.** This is how the issue has traditionally been addressed, and because of funding issues involved in working with SESAs, it may continue to be the most efficient method.

OCSE-PIQ-99-05

July 14, 1999

TO: State IV-D Directors and Regional Program Managers

FROM: David Gray Ross
Commissioner
Office of Child Support Enforcement

RE: Inclusion of Social Security Numbers on License Applications and Other Documents

It has come to our attention that there is some confusion regarding the issue of inclusion of social security numbers on license applications and other documents.

Section 466(a)(13) of the Social Security Act (Act) requires States to implement procedures requiring that the social security number(s) of any applicant for a professional, driver's, occupational, recreational or marriage license be recorded on the application. In addition, section 466(a)(13) of the Act requires procedures requiring that the social security number(s) of any individual subject to a divorce decree, support order or paternity determination or acknowledgment be placed in the records relating to the matter and that the social security number(s) of any individual who has died be place in the death records and recorded on the death certificate. Some States have asked how this requirement applies to those applicants or individuals that do not have social security numbers.

We interpret the statutory language in section 466(a)(13) of the Act to require that States have procedures which require an individual to furnish any social security number that he or she may have. Section 466(a)(13) of the Act does not require that an individual have a social security number as a condition of receiving a license, etc. We would advise States to require persons who wish to apply for a license who do not have social security numbers to submit a sworn affidavit, under penalty of perjury, along with their application stating that they do not have a social security number. Such an affidavit should also be required for divorce, support or paternity matters where an individual indicates that he or she does not have a social security number or in death cases where a family member, next of kin indicates that the deceased did not have a social security number.

This is consistent with the position we took in PIQ-97-04 regarding the requirement for inclusion of social security numbers on voluntary paternity acknowledgment affidavits. In PIQ-97-04 we stated that, although section 452(a)(7) of the Act specified that the social security number of each parent is one of the minimum requirements of an affidavit to be used for the voluntary acknowledgment of paternity, the omission of one or

both of the social security numbers would not invalidate the acknowledgment.

If you have questions regarding this subject, please contact Jan Rothstein of my staff at (202) 401-5073.

OCSE-PIQ-99-06

DATE: August 16, 1999

TO: All State IV-D Directors
Regional Program Managers

FROM: David Gray Ross
Commissioner
Office of Child Support Enforcement

SUBJECT: Direct Imposition of Liens and Levies Across State Lines

We have recently received several inquiries regarding the imposition of liens and levies on financial institutions across State lines without involving the IV-D agency of the State in which the lien is being executed. Please be advised that Federal law does not prohibit this practice. We are providing the following information as general guidance.

The mechanisms by which assets are attached and seized vary from State to State. It is, therefore, impossible to discuss the issue in terminology that is directly applicable in every State. Generally, for purposes of this document, we use the term “lien” to refer to a claim against real or personal property, based upon a debt or obligation. We use the term “levy” to refer to the actual collection or seizure of the property. The process for placing a lien and executing upon a levy will vary by State. In some States, the process may be a single step, while in others, multiple steps may be required.

Question 1: What are the Federal requirements regarding liens and levies?

Answer 1: Section 466(a)(4) of the Social Security Act (the Act) requires that States enact laws under which liens arise by operation of law for child support arrearages. Under section 466(c)(1)(G), the State must have the ability, through administrative process, to secure assets by intercepting or seizing periodic or lump-sum payments, attaching and seizing assets of the obligor held in financial institutions, attaching public and private retirement funds, imposing liens and forcing the sale of property and distribution of proceeds. Section 466(a)(4) also requires that States provide full faith and credit to child support liens arising in another State, as long as the party seeking to enforce the lien complies with procedural rules regarding recording and service of liens in the State in which the real or personal property is located. Under section 466(c)(1), the State must also “recognize and enforce the authority of State agencies of other States to take these actions.” Thus, the IV-D agency must have the power to enforce a lien that arises in another State against property held in the IV-D agency’s State.

Question 2: Can liens or levies be imposed directly against property in another State?

Answer 2: States could enact laws which would give immediate force and effect to another State's liens or levies, much as States were required to do under UIFSA for direct income withholding.

Question 3: Would a State that sent a levy directly to a financial institution in another State be violating Title IV-D of the Social Security Act?

Answer 3: No. Federal law governing the IV-D program does not prohibit the State from attempting a direct levy. In such a case, the law of the State where the financial institution is located is applicable.

Question 4: Would a financial institution which responded and sent money to another State in response to a direct levy be violating Title IV-D of the Social Security Act?

Answer 4: No, a financial institution would not be violating any provision of Title IV-D of the Social Security Act by doing so, although the financial institution should ensure that it complies with applicable law of the State in which the seizure action is occurring.

Question 5: Would the financial institution be required to respond to the direct lien or levy?

Answer 5: It depends upon the law in the State where the financial institution is located and whether that State's procedural rules relating to recording or serving liens or levies have been properly followed. If the State in which the financial institution is located has a law requiring the financial institution to honor a lien or levy sent directly from another State, the financial institution would, of course, be bound to comply.

Question 6: Must a State attempting to issue the lien or levy go through the IV-D agency in the State where the property is located?

Answer 6: Section 466(c)(1) requires that the State IV-D agency assist another State in enforcing a lien that arises in the other State against property held in the IV-D agency's State. As discussed above, a State IV-D agency would not violate Title IV-D if it sent a levy directly to a financial institution across

State lines. However, if problems arise, it may be better for practical purposes to go through the IV-D agency in the State where the property is located. A State may take its own initiative to record and enforce the lien in the other State directly if it is fully aware of the procedural rules of that State. In the interest of ensuring the most effective use of this enforcement technique, without creating avoidable confusion and burden on those who might receive such direct liens or levies, we urge States to proceed with caution when sending liens or levies across State lines.

OCSE-PIQ-99-07

DATE: December 2, 1999

TO: State IV-D Directors
Regional Program Managers

FROM: David Gray Ross
Commissioner
Office of Child Support Enforcement

SUBJECT: SDNH Reporting of Employer Addresses

In consultation with States over the last couple of months we have identified a problem with the source of employer addresses on W-4 reports transmitted from the State Directories of New Hire (SDNH) to the National Directory of New Hires (NDNH). Specifically, what seems to be occurring in some States is that while an employer reports an address on his new hire report to the SDNH, the SDNH is not submitting that address to the NDNH. Instead, the SDNH is using the Federal Employer Identification Number (FEIN) to pull the address from another employer database housed at the State. The address pulled in this manner may not be the appropriate address for child support activities, such as employment verification or income withholding.

SDNH reporting of employer information is required by the Social Security Act as follows:

Social Security Act, section 453A
(b) EMPLOYER INFORMATION.-
(1) REPORTING REQUIREMENT.-
(A) IN GENERAL.-Except as provided in subparagraphs (B) and (C), each employer shall furnish to the Directory of New Hires of the State in which a newly hired employee works, a report that contains the name, address, and social security number of the employee, and the name and address of, and identifying number assigned under section 6109 of the Internal Revenue Code of 1986 to, the employer.
***
(e) ENTRY OF EMPLOYER INFORMATION.-Information shall be entered into the data base maintained by the State Directory of New Hires within 5 business days of receipt from an employer pursuant to subsection (b).
***
(g) TRANSMISSION OF INFORMATION.-
***
(2) TRANSMISSIONS TO THE NATIONAL DIRECTORY OF NEW HIRES.-
(A) NEW HIRE INFORMATION.-Within 3 business days after the date information regarding a newly hired employee is entered into the State Directory of New Hires, the State Directory of New Hires shall furnish the information to the National Directory of New Hires.

To summarize the statute: the employer reports six pieces of

information to the SDNH, the SDNH enters that data on to the database at the State, the SDNH transmits that data to the NDNH. The clear language of the statute requires that the SDNH use and transmit the information submitted by the employer. This should be the most accurate, up-to-date information, and it is the specific information needed for the purpose for which it is submitted. Any other approach to submission undermines the NDNH, as it diminishes the accuracy of the information, and is contrary to the law.

Technical assistance is available to States that need help in identifying or correcting problems such as this. Please contact Angela Kasey at 202-205-3423, email akasey@acf.dhhs.gov, with any questions you may have.

OCSE-PIQ-99-08

DATE: December 3, 1999

TO: All State IV-D Directors
Regional Program Managers

FROM: David Gray Ross
Commissioner
Office of Child Support Enforcement

SUBJECT: Furnishing Consumer Reports for Certain Purposes Relating to Child Support

This is a follow-up and correction to PIQ-98-09 regarding furnishing a consumer report for enforcing a child support order.

Question 1: Is the noncustodial parent required to authorize the release of his or her report when a consumer report is furnished for enforcing a child support order?

Response: No. Such authorization is not required by the noncustodial parent. Section 604(c)(1)(A) of the Fair Credit Reporting Act (FCRA) only requires the consumer's authorization when the consumer report is furnished in connection with credit or insurance transactions (not IV-D transactions) that are not initiated by the consumer.

Question 2: Is the reference to "enforcement" in the last paragraph of the response to Question 2 in PIQ-98-09 correct?

Response: No. The last paragraph of the response to Question 2 in PIQ-98-09 should read, "Section (a)(5) allows a report to be obtained for an establishment or for a modification action." The recent change in the FCRA was to broaden the use of a full report to include establishment and modification, in addition to enforcement.

I hope this additional information is helpful in interpreting the requirements of "Furnishing Consumer Reports for Certain Purposes Relating to Child Support."

Sincerely,

David Gray Ross
Commissioner
Office of Child Support Enforcement