Revised July 30, 1985

State of Minnesota
Department of Human Services

In the Matter of the Proposed Adoption of Minn. Rule 9500.1800 - 9500.1821

Statement of Need and Reasonableness

Introduction and Background

Under current Federal law, state and county child support enforcement programs are eligible to earn as an incentive, a fixed percent of collections made on behalf of AFDC families. The fixed percent is now at 12 percent of AFDC collections. States deduct the 12 percent incentive award from the Federal share of collections before reimbursing the Federal government for its contribution toward the AFDC assistance payment.

According to the Department of Health and Human Services, however, fixed incentive rates do not encourage states to improve program efficiency and effectiveness. Nationally, there is a variance in the efficiency and effectiveness of state child support enforcement programs. Accordingly, in 1984, Congress passed amendments to Part D of Title IV of the Social Security Act that mandate the use of Federal funding to encourage improvement in the performance of state child support enforcement programs.

To reward states and counties that operate more efficient and effective child support enforcement programs and to stimulate collections, the federal government replaced the fixed incentive system with a system under which states will receive a minimum incentive based on amounts collected on behalf of AFDC families and non-AFDC families. Additional amounts above the minimum incentive of 6 percent can be earned if performance criteria are met. This new

system will be effective October 1, 1985.

Under a transition provision in Code of Federal Regulation, title 45, section 303.52(c)(5), (Appendix A of this Statement of Need and Reasonableness) for Federal fiscal years 1986 and 1987, states can earn incentives equal to the greater of the amount they qualify for under the new system or 80 percent of the amount that they would have received under the fixed incentive system in effect during Federal fiscal year 1985.

Federal regulations require states to develop a standard method for passing through a share of incentives to counties, taking into account the efficiency and effectiveness of county collection activities. Accordingly, the Department of Human Services proposes to adopt Parts 9500.1800 to 9500.1821 to implement these Federal requirements. The methods used by the federal government for distributing incentives to states were determined to be compatible with procedures currently in place in counties. The department accepted the public advisory committee's recommendation to model the administration of incentive awards for counties after the method the federal government will use to administer the new incentive award system for states. Most of the provisions of parts 9500.1800 through 9500.1821, therefore, are the same as or substantially similar to the federal regulations governing the new incentive award system for states.

Under Code of Federal Regulations, title 45, section 303.52 (d)(2), states are required to seek local participation in the development of their standard methodology or use the rulemaking process available under State law to receive local input. To comply with Minnesota Statutes, Section 14.10, a "Notice of Intent to Solicit Outside Opinion Concerning Child Support Incentives", (Appendix B,)

was published in the State Register, page 1577, on Monday, January 7, 1985.

On March 5, 1985, the Department mailed a total of 343 copies of State of Minnesota, Department of Human Services Informational Bulletin #85-25, Appendix C. This Informational Bulletin explained that incentive awards would be changing and that the department was in the first steps of the rulemaking procedure. This mailing informed all 87 Minnesota counties, concerned agencies, and individuals of the proposed rule and changes.

To ensure that the proposed rule, parts 9500.1800 through 9500.1821, would be fair and equitable, a public advisory committee was organized by the Project Manager. The committee, which was organized in October 1984 met in November 1984 and January 1985. The 15 members of the public advisory committee represent large, small, rural and urban county IV-D agencies and department staff (Appendix D). The public advisory committee provided input in drafting the rule.

The Project Manager also presented the proposed rule to child support enforcement workers of the Southeastern Region of the State at their quarterly meeting on April 26, 1985. Copies of the proposed Rule and Statement of Need and Reasonableness were handed out to forty child support enforcement workers. The rulemaking procedure, proposed Rule and Statement of Need and Reasonableness were explained during a morning long session.

Effective October 1, 1985, Minnesota Rules, parts 9500.1800 - 9500.1821, establish the system under which the State Office of Child Support Enforcement will pass through the entire amount of Federal incentive money the state receives to counties based on the efficiency and effectiveness of the county child support collection programs.

The Commissioner hereby affirmatively presents the need for and reasonableness of the proposed definitions, except that definitions which are solely for the purpose of identification, e.g., "Commissioner", are presumed by the department to be both needed and reasonable without further justification.

Subpart 1. **Scope.** This subpart is necessary and reasonable to clarify that the definitions apply to the entire sequence of rules.

Subp. 2. **AFDC collections.** It is necessary to define this term to identify the exact financial assistance programs for which incentive payments will be available. It is reasonable to define this term in this manner because this definition is consistent with the definition provided under Code of Federal Regulations, title 45, section 303.52(a). This definition includes title IV-E Foster Care collections.

Subp. 3. **Collections.** This definition is necessary to make it clear that both AFDC collections and non-AFDC collections are included in this term. This definition is reasonable because it is substantially similar to the definition under Code of Federal Regulations, title 45, section 303.52(a).

Subp. 4. **County IV-D agency.** This definition is reasonable because it identifies the agencies that administer the Child Support Enforcement Program on a day to day basis in Minnesota and that are thus eligible to receive incentives. These are county or multi-county agencies subject to the supervision of the Department of Human Services, this definition is also reasonable because it is substantially similar to the definition provided under Code of Federal Regulations, title 45, section 303.52(a). This definition is necessary because it clarifies which county unit of government has the

responsibility for child support enforcement and also where collections are paid. It is also necessary to define this term because the county IV-D agency is the county unit of government, that, through more effective and efficient operation of its child support enforcement program, earns the financial reward of increased incentive awards for the county welfare/human services department.

Subp. 5. **County IV-D costs.** This definition is necessary because county IV-D costs are part of the ratio used to determine the percent in part 9500.1810, subp. 5 and because county IV-D costs are essential in determining whether a county is cost effective and efficient. This definition is reasonable because it is substantially similar to the definition "Total IV-D Administrative Costs" under Code of Federal Regulation, title 45, section 303.52(a). This definition is also reasonable because the reporting of expenditures is a standard and convenient system already in use by all county IV-D agencies and the department.

Subp. 6. **County IV-D agency quarterly incentive award.** This definition is necessary because the determination of the county IV-D agency quarterly incentive awards is the purpose of this rule. The amount of money that the department pays the county for a portion of its contribution toward AFDC assistance payments is the reward for an effective and efficient county IV-D agency. This definition is reasonable because it is substantially similar to Code of Federal Regulations, title 45, section 303.52(c)(2) which mandates a reduction in the amount that would otherwise be paid by the state to reimburse the Federal government its share of assistance payments.

Subp. 7. **Department.** This definition is solely for the purpose of identification and clarification. It is the department as defined under Code of Federal Regulations, title 45, section 303.52(a) that

will receive the state's quarterly incentive award and will pay incentives to county IV-D agencies.

Subp. 8. **Dollar Amount.** This definition is necessary because it identifies where this amount is determined and where it is used in the rule. It is reasonable because it is used to determine a county IV-D agency's quarterly incentive award in a way which is substantially similar to the way the federal government determines the state's quarterly incentive award.

Subp. 9. **Federal fiscal year.** The definition is necessary to ensure that all county IV-D agencies and the department are working within the same time frame. The time frame is reasonable because the incentive system is based on the federal fiscal year.

Subp. 10. **Fees.** It is necessary to define this term because "fees" are subtracted by the department from costs incurred by county IV-D agencies to accurately identify county IV-D costs. It is reasonable to define fees as charges for services paid by individuals for child support enforcement services because this definition is consistent with the Code of Federal Regulations, title 45, section 303.52(b)(4)(iii).

Subp. 11. **Interest collected.** It is necessary to define this term because interest collected is subtracted from costs incurred by county IV-D agencies to accurately identify county IV-D costs. This definition is also necessary because it is one of the items under Code of Federal Regulations, title 45, section 303.52(b)(4)(iii) that the federal government requires the state to subtract from total IV-D administrative costs. It is reasonable because it accurately describes the type of money that must be subtracted from costs.

Subp. 12. **Non-AFDC collections.** It is necessary to define this term because the federal government's calculations differentiate

between AFDC collections and non-AFDC collections. It is reasonable to use this definition as it is consistent with the definition under Code of Federal Regulations, title 45, section 303.52(a).

Subp. 13. **Quarter.** It is necessary to define this term because the county IV-D agencies and the department must work within the same time frame. This definition is reasonable because it is consistent with accounting practices of the federal government.

Subp. 14. **Ratio.** It is necessary to explain this mathematical procedure because this number is used to determine a percent from the schedule in Part 9500.1810. It is reasonable to compute a cost to collection ratio in this manner because it is consistent with the Code of Federal Regulations, title 45, section 303.52(b)(1).

Subp. 15. **Recovered costs.** It is necessary to define this term because "recovered costs" are subtracted by the department from costs incurred by county IV-D agencies to accurately identify county IV-D costs. It is reasonable to define recovered costs as a refund of county IV-D agency administrative expenditures because this definition is consistent with the Code of Federal Regulations, title 45, section 303.52(b)(4)(iii).

Subp. 16. **State's quarterly incentive award.** This definition is necessary because it explains that the incentive award that the state pays to the counties is received quarterly by the department from the federal government and is the source of funds from which the department pays the counties. This definition is reasonable because it is substantially similar to Code of Federal Regulations, title 45, section 303.52(c)(2) which mandates a reduction in the amount that would otherwise be paid by the state to reimburse the Federal government its share of assistance payments.

Part 9500.1805 Purposes and Effect

Part 9500.1805 is necessary to assist the affected parties in understanding the entire rule. Part 9500.1805 is reasonable because it is substantially similar with Code of Federal Regulations, title 45, section 303.52 and is consistent with the consensus of the public advisory committee.

Subpart 1. **Purpose.** Subpart 1 is necessary because this rule is a series of complicated mathematical computations which are difficult to understand without an introduction to them. This subpart is reasonable because it clarifies to the affected parties how the rule parts are logically tied together.

Subp. 2. **Effect.** Subp. 2 is necessary because without those interrelationships explained it would be difficult to understand how the department uses county IV-D agency information to determine incentive awards. Subp. 2 is reasonable because it explains the relationship of the rule parts and enable the reader of the rule to better understand the logical relationship between the individual rule parts.

Part 9500.1810 Ratio Determination

Part 9500.1810 is necessary because it sets forth procedures for the department and county IV-D agencies to follow in order to determine a county IV-D agency's ratio and corresponding percent which will be used in part 9500.1811 in calculating each county IV-D agency's quarterly dollar amounts. This part is reasonable because it follows the public advisory committee's unanimous recommendation that the ratio used to determine the county IV-D agency's percent and subsequent dollar amounts follow the instructions under Code of Federal Regulations, title 45, section 303.52(b)(d) so that when the counties and the department are audited by the federal office there

will be no new terms or procedures to define or explain.

The ratio is the basis for calculating county IV-D agency incentive awards. First the department determines a ratio. From the ratio, a percent is determined by the schedule in part 9500.1810, subpart 5. The percent is multiplied by collections to determine a dollar amount which may be subject to limitations under part 9500.1812. This dollar amount is then used in the distribution formula in part 9500.1815 to determine the county IV-D agency's quarterly incentive award.

Subpart 1. **Time frame.** Subpart 1 is necessary because the definition of a quarter sets the time for which the county IV-D agency submits cost and collection reports to the department. This subpart is reasonable because it corresponds to the time the federal government uses in determining the state's incentive award.

Subp. 2. **Collections credited to the county IV-D agency that makes a collection on behalf of another Minnesota county IV-D agency.** Subpart 2 is necessary to make it clear that collections shall be credited by the county IV-D agency to only the county IV-D agency that makes a collection on behalf of another Minnesota county IV-D agency and not credited to both the initiating and responding county IV-D agencies. The decision to credit collections made to the responding jurisdiction only was made so that the same dollar of child support collected would not be counted twice and to reward the responding county which does the bulk of the collection action in such cases for efficient and effective operation.

Subp. 3. **Optional subtractions from net county IV-D costs.** Subpart 3 is necessary to indicate to county IV-D agencies that the department will make subtractions from net reported costs when determining ratios for incentive calculations if counties provide a

breakdown of these costs when reporting county IV-D costs. It is reasonable because it is substantially similar to Code of Federal Regulations, title 45, section 303.52(b)(4)(iv). These subtractions from net county IV-D costs are also reasonable because they provide an incentive to pursue the traditionally more difficult and expensive paternity cases by allowing drawing and shipping of blood, testing and retesting of blood and human leucocyte antigen (HLA) testing expenses to be a subtraction from county IV-D costs, thereby reducing costs and increasing ratios.

Subp. 4. **Separate ratios.** Subpart 4 is necessary because separate determinations must be made by the department to calculate ratios for AFDC collections and non-AFDC collections. The Federal government awards the state different amounts, one for AFDC and one for non-AFDC. This rule does the same for the counties. Subpart 4 is reasonable because it is substantially similar to Code of Federal Regulations, title 45, section 303.52(b)(1).

Subp 5. **Ratio to percent.** Subpart 5 is necessary to convert each ratio to a percent. Each percent is then used in part 9500.1811 to arrive at the dollar amount. Subpart 5 is reasonable because it is substantially similar to the schedule under Code of Federal Regulations, title 45, section 303.52(b)(1).

Part 9500.1811. Quarterly Determination of Dollar Amounts.

Part 9500.1811 is necessary because it explains how the department mathematically determines each dollar amount needed in part 9500.1815. This part is reasonable because it sets forth a means to objectively determine a dollar amount based on efficient and effective child support collection activities.

Part 9500.1812 Limit on the Quarterly Determination of the Dollar Amount of Non-AFDC Collections.

It is necessary to limit the dollar amount for non-AFDC collections because there are many more potential non-AFDC collection cases than AFDC collection cases, but collection activities must be kept equal in the AFDC and non-AFDC collection areas. It is reasonable to set non-AFDC dollar amount limits in this manner because under Code of Federal Regulations, title 45, section 303.52(b)(3)(i) to (iv), the department must determine the same limits when submitting reports used to determine the state's incentive award. It is reasonable to apply the same limits the federal government applies to the states because the state is passing its entire quarterly incentive award on to the counties.

9500.1815 Distribution Formula

Items A through F are necessary because they establish a standard method for calculating a county IV-D agency's share of the state's quarterly incentive award. Items A through F are reasonable because they provide mathematical instructions that will result in consistent, objective calculations that reward the most effective and efficient counties with proportionately higher incentive awards. This part also provides for the transition period determinations in parts 9500.1817 through 9500.1821.

Other distribution formulas were discussed by the public advisory committee and rejected because they did not promote equal services to AFDC and non-AFDC activities and did not necessarily promote an effective and efficient IV-D operation and because they favored some counties more than others. After discussion, the public advisory committee unanimously agreed upon the distribution formula set forth in part 9500.1815. The public advisory committee also agreed that the

entire incentive award received by the state would be passed through to the counties and that the department would not receive any part of the state's incentive award.

It is necessary for the department to inform the county of these determinations within 45 working days after the end of the quarter because county welfare/human services departments need to know when they will receive the incentive award so they can budget properly. Informing the counties within 45 working days is reasonable because it gives the department sufficient time to make these determinations.

A. This determination is necessary because the total of all county IV-D agency quarterly AFDC dollar amounts is used in item B. Items A through C are reasonable because they accurately describe each step of the formula.

B. This determination is necessary because this quotient, regardless of sign, shall be equally applied to all county IV-D agencies and is used in item C.

C. This determination is necessary because this product is the county IV-D agency's quarterly AFDC incentive award and because it is used in item D.

D. The product identified in this item is necessary because it clearly identifies the county IV-D agency's quarterly AFDC incentive award. This item is reasonable because it is the result of the determinations made in part 9500.1815 A through C. Item D is the base amount used for the adjustment at the end of the federal fiscal year, for alternative incentive award determinations and redeterminations in federal fiscal years 1986 and 1987.

E. This item is necessary because it gives instructions on how to determine a county IV-D agency's share of the state's quarterly non-AFDC incentive award. This item is reasonable because it is

consistent with item D above.

F. This item is necessary because it clarifies that the county IV-D agency's quarterly AFDC and non-AFDC incentive awards as determined in items D and E are subject to the determinations of parts 9500.1817 through 9500.1821. This item is reasonable because it is substantially similar with Code of Federal Regulations, title 45, section 303.52(c)(3)(5).

9500.1817 Adjustments

It is necessary to address the potential for overpayments or underpayments of incentive awards paid by the state to county IV-D agencies because the federal government will estimate the total incentive payment that the State will receive for an upcoming federal fiscal year but then readjust the state award based on actual amounts reported. If, following the end of the federal fiscal year, adjustments to the estimate are necessary, the state's AFDC grant award will be reduced or increased because of over or under-estimates for prior quarters. It is reasonable to make the necessary adjustments to county IV-D agency incentive awards following the end of the federal fiscal year because that is when adjustments to the state's incentive award will be made. It is necessary for the department to notify the county of these determinations within 30 working days because county welfare/human services departments need to know when they will receive this adjustment so they can budget properly. Notification within 30 days is reasonable because it gives the department sufficient time to make these determinations.

9500.1820 Federal Fiscal Years 1986 and 1987 Alternative Incentive Award Determination

Part 9500.1820 is necessary because it provides for a smooth

transition from the old incentive system to the new one, and for a way to avoid undue pressure on some county IV-D agencies to immediately change their current operating methods. This 80 percent transition provision is reasonable because it is what the federal government allows the state for this time under Code of Federal Regulations, title 45, section 303.52(c)(5).

The formula used to calculate incentive awards for federal fiscal years 1986 and 1987 is reasonable because it allows less effective and efficient county IV-D agencies two years to improve ratios to the point where they may earn higher incentive awards under the new system.

The public advisory committee considered other formulas for this transition period but unanimously recommended this formula and two year time because it guarantees each county IV-D agency at least 80 percent of what it would have received under the incentive award system in effect for federal fiscal year 1985.

A. Item A is necessary because it explains how to arrive at the federal fiscal year 1985 incentive award amount which is needed in order to determine the guaranteed 80 percent amount in item B. It is reasonable because it is substantially similar with Code of Federal Regulations, title 45, section 303.52(c)(5).

B. This item is necessary because it provides the procedure to arrive at the amount which is equal to 80 percent of what each county IV-D agency would earn under the incentive award system in effect for federal fiscal year 1985. It is reasonable because it is substantially similar with Code of Federal Regulations, title 45, section 302.52(c)(5).

C. Item C is necessary because it is used in item G for comparision between item E, whose corresponding incentive award in

item D is higher than in item C. Item C is reasonable because by multiplying by .81 the department assures county IV-D agencies that funds will not be drawn away from a county IV-D agency in an amount that would bring them below the 80 percent guaranteed amount.

D. Item D is necessary and reasonable because it provides for the incentive award amount that will be used in item E, F, and G, for comparison with the 80 percent amount from item B and the 81 percent amount from item C.

E through I. Items E through I are necessary and reasonable as they determine incentive awards, clarify the appropriate award, continue incentive award comparisons and identify the final incentive award.

J. Item J is necessary because it instructs the department to make the determinations in part 9500.1821 if funds must be drawn from county IV-D agencies whose incentive awards are greater than 80 percent to supplement those county IV-D agencies whose incentive awards are less than 80 percent of what their award would have been under the incentive system in effect for federal fiscal year 1985. The purpose of part 9500.1820 is to guarantee each county at least 80 percent of its federal fiscal year 1985 incentive award. This is reasonable because this is what the federal government has guaranteed the state, and the department wants to pass through to the counties this same guarantee. If the application of the formula to all the counties results in any county receiving less than the 80 percent guarantee, the department must draw some of the incentive money from counties that would otherwise receive more than 80 percent. It might be necessary to recalculate incentive awards because the amounts received from the federal government are the only amounts available for incentive awards to the counties. If the limited pool of federal

money is too little to pay all counties the amount they would receive under the formula in Parts 9500.1820, item J instructs the department on how to recalculate incentive award amounts to ensure each county at least 80 percent of what they would have earned under the incentive award system in effect for federal fiscal year 1985.

Part 9500.1821 Redetermination of Incentive Awards For Federal Fiscal Years 1986 and 1987

Part 9500.1821 is necessary because for the first two years of the new incentive award system, counties with low ratios are guaranteed at least 80 percent of what they would have earned under the incentive award system in effect in federal fiscal year 1985. This principle was unanimously recommended by the public advisory committee and is reasonable because it is consistent with the 80 percent transition provision under Code of Federal Regulations, title 45, 303.52(c)(5). The purpose of this part is to redistribute funds from those county IV-D agencies whose incentive awards are above 80 percent of what they would have earned under the incentive award system in effect for federal fiscal year 1985 to those county IV-D agencies whose incentive awards are less than 80 percent of what they would have earned under the incentive award system in effect for federal fiscal year 1985.

Part 9500.1821 must be used when part 9500.1820, item J indicates that during federal fiscal years 1986 and 1987 one or more counties, under the new incentive award system, would receive less than 80 percent of what they would have received under the incentive award in effect for federal year 1985.

A. and B. Items A and B are necessary because they are used to determine the total of all county IV-D agency incentive awards from part 9500.1820 items F, G, and H. Items A and B are reasonable

because these totals are used in item C.

C. Item C is necessary because it is subtracted from the state's yearly incentive award in item D. Item C is reasonable because it is used to determine the total amount of incentive awards that are over 80 percent that the department can later divide and add to county IV-D agency incentive awards that are under 80 percent of their federal fiscal year 1985 incentive award amount to bring the latter up to 80 percent of what they would have earned under the incentive award system in effect for federal fiscal year 1985.

D. Item D is necessary because it provides the department with the difference between the total of the county IV-D agencies earned incentive awards and the state's yearly incentive award. This item is reasonable because this amount is used in item E.

E. Item E is necessary because this step provides the department with the total amount of county IV-D agency incentive awards over the 80 percent amount. Item E is reasonable because this total is used in item F.

F. Item F is necessary because it identifies the incentive award amount from each county IV-D agency which is available for redistribution to those counties below the 80 percent level determined in part 9500.1820, item A. Item F is reasonable because it is used in steps G and H below.

G. Item G is necessary because it requires the department to determine the total of the amounts determined in item F. Item G is reasonable because that total will be needed to make the determinations in item H and I below.

H. and I. Items H and I are necessary because they provide the mechanism by which the department identifies the redetermination adjustment amount and applies that amount to bring the county IV-D

agencies that are below the 80 percent amount up to at least 80 percent. Items H and I are reasonable because they achieve the 80 percent amount that the public advisory committee unanimously agreed upon and are consistent with the 80 percent guarantee provided under Code of Federal Regulations, title 45, section 303.52(c)(5).

9500.1825 Effective Date of Parts 9500.1810 through 9500.1821

This part is necessary because the federal regulations are not effective until October 1, 1985. This part is also necessary as there will be no incentive money available until after the end of the quarter that starts October 1, 1985. The part is reasonable because it is the same starting date the federal government shall use to compute incentive payments for the state under Code of Federal Regulations, title 45, section 303.52(b).

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This proposed rule is expected to procede without a public hearing.

If a public hearing is requested, the Project Manager does not plan to call any expert witnesses from outside the Department to testify on behalf of the rule.

The foregoing is submitted in support of and as justification for the final adoption of the proposed rule.

Dated: July 31, 1985

LEONARD W. LEVINE
Commissioner
Minnesota Department of
Human Services

State of Minnesota
Department of Human Services

In the Matter of the Proposed Adoption
of Minn. Rule 9500.1800 - 9500.1821

Appendices to
Statement of Need
and Reasonableness

APPENDICES:

A. Federal Register, Thursday, May 9, 1985, Part II, Department of Health and Human Services-Office of Child Support Enforcement; 45 CFR Parts 301, 302, 303, 304, 305, and 307; Child Support Enforcement Program, Implementation of Amendments of 1984, Final Rule.

B. Notice of Intent to Solicit Outside Opinion Concerning Child Support Incentives

C. Department of Human Services Informational Bulletin #85-25.

D. Members of the Public Advisory Committee.

E. Computer Printout of Incentive Awards Based on 1984 Data (working example).

Federal Register

Thursday
May 9, 1985

Part II

Department of Health and Human Services

Office of Child Support Enforcement

45 CFR Parts 301, 302, 303, 304, 305, and 307

Child Support Enforcement Program; Implementation of Amendments of 1984; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Child Support Enforcement

45 CFR Parts 301, 302, 303, 304, 305, and 307

Child Support Enforcement Program; Implementation of Child Support Enforcement Amendments of 1984

AGENCY: Office of Child Support Enforcement (OCSE), HHS.

ACTION: Final rule.

SUMMARY: This final rule implements the Child Support Enforcement Amendments of 1984, Pub. L. 98-378, which amend title IV-D of the Social Security Act (the Act). The statutory changes implemented by these regulations fall within three basic categories.

(1) Availability of Services;
(2) Enforcement Techniques; and
(3) Program Administration and Financing.

For a detailed discussion of these categories see SUPPLEMENTARY INFORMATION. These regulations are effective (May 9, 1985).

DATES: The various compliance dates of the statutory requirements are listed below:

September 1, 1984—Imposition of Optional Late Payment Fees on Obligated Parents Who Owe Overdue Support (§ 302.75)

October 1, 1984:
- Collection and Distribution of Support in Foster Care Maintenance Cases (§ 302.52)
- Continuing IV-D Services for Families that Lose AFDC Eligibility (§ 302.51)
- Computerized Support Enforcement Systems (45 CFR Part 307)

December 1, 1984—State Commissions on Child Support (§ 304.95)

October 1, 1985:
- Mandatory State Procedures (§§ 302.70, and 303.100 through 303.105)
- Incentive Payments to States and Political Subdivisions (§§ 302.55 and 303.52)
- Notice of Collection of Assigned Support (§ 302.54)
- Publicizing the Availability of Support Enforcement Services (§ 302.30)
- Mandatory Collection of Spousal Support (§§ 302.17 and 302.31)
- Payment of Support through the IV-D Agency or Other Entity (§ 302.57)

Effective for refunds payable after December 31, 1985, and before January 1, 1991—Collection of Past-due Support from Federal Income Tax Refunds in non-AFDC Cases (§ 303.72)

October 1, 1987—State Guidelines for Child Support Awards (§ 302.56)

October 1, 1987 and thereafter—Reduction in the Federal Matching Rate (45 CFR Parts 301, 304, 305 and 307)

See also the discussion under the heading "Paperwork Reduction Act" regarding information collection requirements.

FOR FURTHER INFORMATION CONTACT: At (301) 443-5350:

Craig Hathaway (Foster Care; Publicizing Services; Spousal Support; Notice of Collection; Date of Collections; Income or Wage Withholding; State Commissions)

Marianne Rufty (Expedited Processes; Liens; Posting Security, Bond or Guarantee; Information to Consumer Reporting Agencies; Delays in Implementation of Required Practices; Exemptions from Required Practices; Payment through IV-D Agency or Other Entity; Incentive Payments; Reductions in Federal Matching Rate)

Carol Jordan (Federal and State Income Tax Refund Offset; Access to Federal Parent Locator Service; Continuing IV-D Services for Families that Lose AFDC Eligibility; Guidelines for Setting Child Support Awards; Late Payment Fees)

Michael Fitzgerald (90 Percent Funding for Automated Systems Hardware; Required Application Fee)

SUPPLEMENTARY INFORMATION: The preamble to these regulations contains a detailed summary of the regulatory requirements followed by responses to comments received on the proposed regulations. To help readers locate corresponding portions of the preamble, identical headings are used to describe each section of the summary and each section of the responses to comments.

The following is a summary of the requirements implemented by these regulations.

Mandatory State Procedures

Since the inception of the Federal Child Support Enforcement program there has been a marked difference in the level of success of the programs operated by the various States. In the nine years the Federal program has been in existence, certain procedures which have noticeably increased the effectiveness of State programs have been identified. As a result of this experience, Congress has enacted sections 454(20)a and 466 of the Act to require all States to implement these proven procedures by October 1, 1985. However, if a State demonstrates to the Secretary that State legislation is required to conform the State plan to one or more of the requirements of the new statute, the State's plan shall not be regarded as failing to comply solely by reason of its failure to meet the requirements imposed by the new amendments until four months after the end of the first session of the State's legislature which ends on or after October 1, 1985.

These regulations: (A) require that a State plan for child support enforcement must provide that the State has in effect laws governing the mandatory enforcement procedures specified in section 466 of the Act; (B) specify how a State should proceed in order to obtain an exemption from one or more of these procedures and the basis for granting exemptions, and (C) specify the criteria that a State must meet in implementing the mandatory enforcement procedures.

State Plan Requirement (§ 302.70)

The regulation at 45 CFR 302.70 contains the State plan requirement for the use of mandatory practices to improve program effectiveness as specified in the paragraph 454(20) of the Act. The definition of "overdue support" from section 466(e) of the Act that is applicable to all mandatory practices is in the general definitions section 45 CFR 301.1 "Overdue support" means a delinquency pursuant to an obligation determined under a court order, or an order of an administrative process established under State law, for support and maintenance of a minor child which is owed to or on behalf of the child or for the absent parent's spouse (or former spouse) with whom the child is living, if and to the extent that a spousal support obligation has been established and the child support obligation is being enforced under the State's IV-D plan. At the option of the State, overdue support may include amounts which otherwise meet the definition in the previous sentence, but which are owed to or on behalf of a child who is not a minor child. The option to include support owed to children who are not minors applies independently to the procedures under section 466 and these regulations at § 302.70.

Under § 302.70(a), a State plan for child support enforcement must provide that the State has in effect and has implemented laws and procedures specified in section 466(a) of the Act for: (1) Carrying out a program for the withholding of amounts from the wages of individuals to comply with support orders; (2) establishing and enforcing support orders by expedited processes; (3) obtaining overdue support from State income tax refunds in cases where support is assigned to the State under

sections 402(a)(26) or 471(a)(17) of the Act and where support is collected under section 454(6) of the Act; (4) imposing liens against real or personal property for amounts of overdue support; (5) establishing a child's paternity at least up to the child's 18th birthday; (6) requiring the absent parent to give security, post a bond or give some guarantee to secure payment of overdue support (7) making available to consumer reporting agencies at their request information regarding the amount of support owed by an absent parent if the amount is more than $1,000 or at the option of the State if the amount is less than $1,000; and (8) including a provision for wage withholding in child support orders issued or modified in the State.

Section 466 requires States to use procedures 3, 4, 6 and 7 except when they determine that the procedures are inappropriate in an individual case. Using guidelines generally available to the public, States must take into account the payment record of the absent parent, the availability of other remedies, and other relevant considerations in determining whether use of a particular procedure is inappropriate in an individual case. States may not develop guidelines that determine a majority of cases in which no other remedy is being used to be inappropriate. We have implemented this requirement in § 302.70(b). Under § 302.70(c), State laws enacted to implement these effective practices must give States sufficient authority to comply with the requirements contained in 45 CFR 303.100 through 303.105. We have not included a section under Part 300 of the regulations on paternity established up to the child's 18th birthday because including the requirement under § 302.70 is adequate to regulate this mandatory procedure.

Section 466(d) of the Act allows the Secretary of HHS to grant a State (or a political subdivision with respect to expedited process) an exemption from enacting and using any of the procedures mandated by the new law if the State demonstrates that the procedure would not increase the effectiveness and efficiency of the State's Child Support Enforcement program. Such demonstration must be supported through the presentation of data pertaining to caseloads, processing time, administrative costs, average support collections or other actual or estimated data that the Secretary may require. The Secretary will review the exemption periodically and terminate it if circumstances, including effectiveness, should change.

Under § 302.70(d)(1), a State may request an exemption from the State plan requirements of paragraph (a) by submitting a request for exemption to the appropriate Regional Office. Under this process, a State may also request an exemption from the requirement for expedited processes for a political subdivision of the State. Under § 302.70(d)(2), the Secretary will grant an exemption for up to three years upon a demonstration by the State that compliance would not increase the effectiveness and efficiency of its Child Support Enforcement program. To support an initial exemption, the information required by section 466(d) of the Act must be provided and documented by the State. Because the Congress has given the Secretary discretion to determine whether or not to grant an exemption, disapproval by the Secretary of a request for exemption is not subject to appeal.

Section 302.70(d)(3) provides for review by the Secretary and termination of the exemption for the State (or political subdivision in the case of expedited process) if the State cannot demonstrate that it continues to warrant an exemption in accordance with paragraph (d). Under paragraph (d)(4), a State must request an extension of an exemption 90 days prior to the end of the exemption period granted by the Secretary by submitting current data that demonstrates that compliance with the required procedure will not increase the efficiency and effectiveness of its Child Support Enforcement program.

If the Secretary revokes an extension or does not grant an extension of an exemption, paragraph (d)(5) requires the State to enact the appropriate laws and procedures to implement the mandatory practice by the beginning of the fourth month after the end of the first session of the State's legislature which ends after the date the exemption is revoked or the extension denied. If no State law is necessary, the State must establish and use the procedure by the beginning of the fourth month after the date the exemption is revoked.

Procedures for Wage or Income Withholding

Section 466 of the Act requires that States provide for by law and have in effect two distinct procedures for dealing with wage withholding. The first, required under section 466 (a)(1) and (b) of the Act, pertains only to cases being enforced through the IV-D agency. Under this requirement, States must have and use a procedure that requires wage withholding to be triggered in IV-D cases whenever an arrearage accrues that is equal to the amount of support payable for one month. Withholding is to begin without amendment to the order or further action by the court. Section 466(b) also specifies other elements of the withholding system for IV-D cases such as the basis for appeal, maximum amounts of withholding, imposing fines on noncooperative employers and so forth.

The second procedure, required by section 466(a)(8) of the Act, provides that all new or modified orders issued in the State include a provision in the order for wage withholding when an arrearage occurs. The intent of the second required State procedure is to ensure that orders not being enforced through the IV-D agency will include in them the authority necessary to permit wage withholding to be initiated by someone other than the IV-D agency (e.g., a private attorney).

The specific requirements for applying wage withholding that are set out for IV-D cases do not apply to wage withholding that ensues solely from the inclusion of a wage withholding clause in an order. States are free to establish the conditions and procedures to be applied for wage withholding for cases not being enforced through the IV-D agency. It is likely that most States will conform these conditions and procedures to those required to be used for IV-D cases. Should the conditions and provisions of the two required procedures differ, however, the procedures required to be used for IV-D cases must be applied in IV-D cases. For example, if an order calls for withholding to begin when the arrearage amount equals the amount payable for two months in accordance with the State's procedure for orders not being enforced under title IV-D, withholding must still begin after one month's arrearage accrues in accordance with the State procedure that applies to all IV-D cases, if that order is now being enforced under the State's IV-D plan.

We implemented sections 466(a) (1) and (8) and (b) of the Act which provide for withholding of income or wages of individuals who owe overdue support by adding a section 45 CFR 303.100, Procedures for wage or income withholding. To implement section 466(b)(1) of the Act, § 303.100(a)(1) requires that States must ensure that in the case of each absent parent subject to a support order in the State which is being enforced under the State plan, so much of his or her wages must be withheld as is necessary to comply with the order. In addition to withholding the amount due for current support, paragraph (a)(2) requires the State to withhold an additional amount of wages

to be applied toward liquidation of overdue support. Paragraph (a)(3) limits the total amount withheld for support and other purposes to an amount not to exceed the maximum permitted under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. 1673(b)).

In accordance with section 466(b)(2) of the Act, § 303.100(a)(4) requires that the State law be designed so that, in the case of a support order being enforced under the State plan, withholding occurs without the need for any amendment to the support order involved or any further action by the court or entity that issued it. This blanket provision of State law must apply to both existing and new support orders.

Section 466(a)(8) of the Act and § 303.100(h), which implements the second required State procedure discussed above, provide that new or modified support orders established after the effective date of the new law must have a specific provision for withholding. As states earlier, this is to ensure that withholding as a means of collecting support is available if arrearages occur without the necessity of applying for IV-D services. Notwithstanding, if a new or modified support order does not include a provision for withholding and the order is being enforced by the IV-D agency, withholding must occur as required in § 303.100 (a) through (g).

To implement the requirements under section 466(b)(3) of the Act for triggering withholding § 303.100(a)(4) requires that the State take steps to begin withholding on the date on which the parent fails to make payments in an amount equal to one month's support obligation. This does not mean that the individual must miss paying the support obligation for one month. Any combination of unpaid support totalling one month's accrued arrearages would trigger a withholding. Paragraph (a)(4) also requires the State to take steps to implement the withholding at any earlier time that is in accordance with State law or that the absent parent may request. This means that a State could use withholding to collect support in all cases if it chose to do so.

In accordance with section 466(b)(4) of the Act, § 303.100(a)(5) specifies that the only basis for contesting a withholding is a mistake of fact, which means only an error in the amount of current or overdue support or the identity of the alleged absent parent.

Section 303.100(a)(6) requires that States prorate amounts available for withholding where there is more than one notice of withholding against a single absent parent, and that current support be given priority up to the limits imposed by section 303(b) of the Consumer Credit Protection Act.

Section 466(b)(4) of the Act and § 303.100(a)(7) require that withholding be carried out in full compliance with all procedural due process requirements under the State's laws. Paragraph (a)(8) specifies that the absent parent may not avoid imposition of wage withholding simply by paying the overdue support. Section 303.100(a)(9) requires States to have procedures for terminating the withholding promptly, in accordance with section 466(b)(10) of the Act, but in no case should the payment of overdue support be the sole reason for termination. In paragraph (a)(10) we require States to have procedures for promptly refunding to individuals monies that have been improperly withheld.

Under section 466(b)(4), States must provide notice to an individual before notifying the individual's employer concerning a withholding. The notice must inform the individual of the intent to withhold and of the procedures to follow to contest the withholding. An individual may contest the withholding only on the basis of a mistake of fact. If the individual contests the proposed withholding, the State must determine whether or not the withholding will occur and, if so, notify the individual, within no more than 45 days after the provision of the advance notice, of the timeframe within which the withholding is the begin. To implement these requirements, § 303.100 (b) and (c) set forth the criteria that States must meet in giving advance notice and providing an opportunity to contest the withholding. In paragraph (b)(1) on the date the absent parent fails to make payments in an amount equal to the support payable for one month, States must take steps to provide advance notice to the absent parent of the delinquency of support payments and the potential withholding. The notice must inform individuals: (1) of the amount of overdue support that is owed and the amount of wages to be withheld; (2) that the withholding applies to any current or subsequent employer or period of employment; (3) of the methods available for contesting the withholding on the grounds that the withholding is not proper because of mistakes of fact; (4) of the period within which the State must be contacted in order to contest the withholding and that failure to contact the State within the specified time limit will result in the State notifying the employer to begin the withholding; and (5) of the actions the State will take if the individual contests the withholding. Although we are not specifying a period of time within which an individual must notify the State to contest the withholding, States should establish a standard time period (for example, 10 days) that would allow them to complete all required action within the statutory 45-day limit contained in paragraph (c).

As specified in section 466(b)(4) of the Act, paragraph (b)(2)(i) exempts from the requirements for advance notice and State procedures when the absent parent contests the withholding in response to the advance notice any State which has a withholding system in effect as of August 16, 1984, if the system provides, on that date and afterwards, any other procedures necessary to meet the State's procedural due process requirements. Paragraph (b)(2)(ii) requires these States to take steps to send the employer the notice required in paragraph (d) on the date on which the absent parent fails to make payments in an amount equal to the support payable for one month and to meet all other requirements of § 303.100.

Paragraph (c) requires that States establish procedures for use when an absent parent contests a withholding in response to the advance notice. At a minimum, the procedures must provide that the State, within 45 days of giving advance notice to the individual, will: (1) Give the individual an opportunity to present his or her case; (2) decide if withholding will occur based on an evaluation of the facts; (3) notify the individual whether or not the withholding is to occur and if so, include in the notice the timeframe within which withholding will begin and the information provided to the employer in the notice required in paragraph (d); and (4) if the withholding is to occur, send the notice to the employer required under paragraph (d).

When the absent parent does not contest the withholding within the timeframe specified by the State has exhausted all procedures established by the State in accordance with paragraph (c), the State must give notice of the withholding to the employer, in accordance with section 466(b)(6)(A) of the Act and § 303.100(d). Clear Congressional intent in the Conference report indicates that Federal employees are subject to the withholding provisions of the new statute. Therefore, in cases involving Federal employees and members of the uniformed services, the notice to the employer must be directed to the appropriate designated official identified in: Appendix A of 5 CFR Part 581 for Federal employees; 32 CFR 54.6(g) of proposed regulations issued October 18, 1982 (47 FR 46297) for members of the military; 42 CFR 21.74

for members of the Public Health Service; and 33 CFR 54.07 for members of the Coast Guard.

Section 466(b)(6) of the Act sets forth specific requirements with respect to notice to the employer as well as responsibilities of the employer and the State in withholding wages. To meet these requirements, the notice to the employer must contain the elements listed in § 303.100(d)(1). Under paragraph (d)(1)(i) the notice must require the employer to withhold the amount specified in the notice (and include a statement that the amount actually withheld for support and for other purposes, including the fee specified under paragraph (d)(1)(iii), may not be in excess of the amount allowed under section 303(b) of the Consumer Credit Protection Act). Under paragraph (d)(1)(ii), the notice must instruct the employer to pay the amount to the State (or other individual or entity that the State designates) within 10 days of the date the employee is paid. Under paragraph (d)(1)(iii), the State may allow the employer to deduct a fee established by the State and specified in the notice for the administrative costs of each withholding. Under this provision, the State must specify that the fee be withheld from the absent parent's wages in addition to the amount to be withheld to satisfy support.

Under paragraph (d)(1)(iv), the notice must state that the withholding is binding on the employer until further notice by the State. In addition, paragraph (d)(1)(v) requires the notice to specify that the employer is subject to a fine for discharging, refusing to employ or taking disciplinary action against an individual because of a withholding. Paragraph (d)(1)(iv) require the notice to specify that, if the employer fails to withhold wages, the employer is liable for the accumulated amount the employer should have withheld. In paragraph (d)(1)(vii), the withholding must have priority over any other legal process under State law against the same wages as required by section 466(b)(7) of the Act. This means that an employer must withhold amounts for support before complying with any other legal process imposed in accordance with State law. In paragraph (d)(1)(viii), employers may combine withheld amounts in a single payment for each appropriate agency requesting withholding and separately identify the portion of the payment which is attributable to each individual employee, in accordance with section 466(b)(6)(B) of the Act.

In § 303.100 (d)(1) (ix) and (x) and (d)(2), using the authority granted to the Secretary under section 1102 of the Act we require some general requirements to facilitate withholding. Section 1102 authorizes the Secretary of HHS to publish regulations not inconsistent with the Act which may be necessary to efficiently administer the Secretary's functions under the Act.

Paragraph (d)(1)(ix) requires the employer to implement the withholding no later than the first pay period that occurs after 14 days from the mailing date on the notice. In paragraph (d)(1)(x), we require that employers must notify the State promptly of the termination of the individual's employment and provide the individual's last known address and the name and address of the individual's new employer, if known. We believe these requirements will ensure the proper implementation of withholding. Under paragraph (d)(2), if the absent parent does not contest the withholding within the time period specified in the advance notice, the State must immediately send the notice to the employer. Paragraph (d)(3) requires that, if the absent parent changes employment within the State while the withholding is in effect, the State must notify the new employer, in accordance with the requirements of paragraph (d)(1), that the withholding is binding on the new employer.

Section 303.100(e) outlines the procedures for the administration of withholding as provided by section 466(b)(5) of the Act. Under § 303.100(e)(1), a State must designate a public agency to administer withholding in accordance with procedures specified by the State for keeping adequate records to document, track and monitor support payments. The State may designate public or private entities to administer the withholding on a State or local basis under the supervision of the designated State withholding agency if the entity, or entities are publicly accountable and follow the procedures specified by the State. The State may designate only one entity to administer withholding in each jurisdiction. Paragraph (e)(2) requires the State under (e)(1) to distribute amounts withheld promptly in accordance with section 457 of the Act and related regulations A State may contract with private firms for the collection and distribution of withheld amounts. If a State contracts with a private firm, the State must reduce its IV-D expenditures by any interest earned by the firm on withheld amounts in the same manner as it would for interest earned on any other IV-D transactions. This is in accordance with section 455 of the Act. Under this requirement, a State may allow the firm to keep interest earned as payment for services provided, but the interest amount must be deducted from the State's IV-D expenditures.

The new section 466(b)(8) gives a State the option to expand its withholding system to include withholding from forms of income other than wages in order to ensure that support owed by absent parents will be collected regardless of the nature of their income-producing activities. Section 303.100(f) implements this optional provision.

Under § 303.100(g)(1), we implemented the requirement in section 466(b)(9) that States extend their withholding systems to include withholding in cases where the support orders were issued in other States. As specified in the statute, this provision is necessary to ensure that support owed to children and their custodial parents will be collected without regard to the residence of the absent parent.

Although the requirements contained in § 303.100 (g)(2) through (g)(7) are not specifically required by the statute, we believe they are necessary for the proper implementation of the statute and to clarify the responsibilities of each State involved in an interstate withholding. We are, therefore, using the authority granted to us under section 1102 of the Act to impose these requirements.

In paragraph (g)(2), we require that the State law require employers within the State's jurisdiction to comply with a withholding notice. Under paragraph (g)(3), we require that once withholding in a particular case is required, the IV-D agency of a State in which the custodial parent applied for IV-D services must promptly notify the IV-D agency of any other State in which the absent parent is employed in order to implement interstate withholding. We require this notification to contain all the information necessary to carry out the withholding, including the amount requested to be withheld, a copy of the support order and a statement of arrearages. If necessary, the State where the support order is entered must promptly provide the information necessary to carry out the withholding when requested by the State where the custodial parent applied for services. Paragraph (g)(4) requires the State in which the individual is employed to implement withholding promptly upon receipt of the notice to withhold from the State where the custodial parent applied for services.

Since the State where the absent parent is employed must carry out the

withholding with the employer, in paragraph (g)(5) we require that State provide the advance notice to the absent parent, the opportunity to contest the withholding and the notice to the employer. In addition, under paragraph (g)(5), when an absent parent terminates employment within the State, that State must notify the State in which the custodial parent applied for services that the absent parent is no longer employed in the State and provide the name and address of the absent parent and new employer, if known. This will allow the State where the custodial parent applied for services to notify the new State where the absent parent is currently employed to implement withholding. Under paragraph (g)(6), all procedural due process requirements of the State where the absent parent is employed would apply. Finally, paragraph (g)(7) provides that, except for specifying when the withholding shall apply which is controlled by the State where the support order was entered, the law and procedures of the State where the absent parent is employed shall apply.

Paragraph (h) requires support orders issued or modified in the State beginning October 1, 1985, to include a provision for wage withholding, as discussed earlier in this preamble.

Expedited Processes

We implemented the requirements of section 466(a)(2) by adding 45 CFR 303.101, Expedited processes. Paragraph (a) of § 303.101 defines the term "expedited processes" as administrative or expedited judicial processes or both which increase effectiveness and meet processing times specified in paragraph (b)(2) and under which the presiding officer is not a judge of the court.

To implement the specific requirements of section 466(a)(2) of the Act, paragraph (b)(1) requires States to have in effect and use expedited processes to establish and enforce support orders in intrastate and interstate cases. Under paragraph (b)(2), actions to establish or enforce support obligations in IV-D cases must be completed from time of filing to time of disposition within the following time frames: (1) 90 percent in 3 months; (2) 98 percent in 6 months; and (3) 100 percent in 12 months. Under paragraph (b)(3), the State may use expedited processes for paternity establishment. A State may not simply enact a law authorizing the use of expedited processes but must in fact use them in lieu of full judicial process to ensure more effective and efficient processing of support establishment and enforcement actions. Under paragraph (b)(4), in cases which involve complicated issues requiring judicial resolution, the State must establish a temporary support order under its expedited processes and may then refer the remaining complex issues to the full judicial system for resolution.

Section 303.101(c) sets forth the safeguards that a State's expedited processes must provide. Paragraph (c)(1) requires that orders established under the State's expedited processes have the same force and effect under State law as orders established by full judicial process. Under paragraph (c)(2), the State's processes must ensure that the rights of the individuals involved are protected. Paragraph (c)(3) requires that the State's processes provide the parties with a copy of the support order.

To ensure that presiding officers in the State's expedited processes are qualified, paragraph (c)(4) requires States to have written procedures to ensure their qualifications. Paragraph (c)(5) permits the recommendations of presiding officers under the State's expedited processes to be ratified by a judge. Lastly, paragraph (c)(6) allows any action taken under the State's expedited processes to be reviewed under the State's generally applicable judicial procedures.

Section 303.101(d) sets forth the minimum functions that a presiding officer under a State's expedited processes must perform. In effect, presiding officers must, at a minimum, be delegated the authority to: (1) Take testimony and establish a record; (2) evaluate evidence and make recommendations or decisions to establish and enforce orders; (3) accept voluntary acknowledge of support liability and stipulated agreements setting the amount of support to be paid and, if the State establishes paternity using expedited processes, accept voluntary acknowledge of paternity, and (4) enter default orders if the absent parent does not respond to notice or other State process within a reasonable period of time specified by the State.

The experience of States which use some form of expedited process has shown that presiding officers must have authority to perform the above functions. States may expand the authority of presiding officers to include enforcement of support obligations and issuance of default judgments or may delegate more authority to them based on their particular needs. For example, where a high percentage of absent parents fail to appear for hearings a State might delegate the authority to issue bench warrants to presiding officers. A State must delegate enough authority to presiding officers to allow them to perform in a truly expedited manner.

Under § 303.101(e), in accordance with the statute, a State may be granted an exemption from the requirements of §303.101 for a political subdivision on the basis of the political subdivision's effectiveness and timeliness of support order issuance and enforcement in the same manner that States may be granted exemptions from required procedures in accordance with § 302.70(d).

State Income Tax Refund Offset

We implemented section 466(a)(3) by adding 45 CFR 303.102 which sets out the criteria for implementing State income tax refund offset procedures. The offset process is mandatory for all appropriate IV-D cases, including AFDC, non-AFDC and foster care maintenance cases regardless of whether they are intrastate cases or interstate cases referred from other States.

Section 303.102(a) specifies which overdue support qualifies for offset. Paragraph (a)(1) clarifies that overdue support in all IV-D cases qualifies for State income tax offset. Paragraph (a)(2) specifies that overdue support qualifies for offset if the State does not determine that the case is inappropriate for use of this procedure using guidelines it must develop which are generally available to the public. We have given States maximum flexibility to set which overdue support qualifies for offset to permit each State to establish the most effective and efficient procedures for offsetting State income tax refunds. We recognize that one set of criteria in Federal regulations will not be suitable for all States.

Paragraph (b)(1) requires the IV-D agency to establish procedures to ensure that amounts referred for offset have been verified and are accurate. The regulations do not specify the procedures States must use to ensure accuracy, since procedures may vary from State to State. Paragraph (b)(2) requires the IV-D agency to notify the appropriate State office or agency of any significant reductions in amounts referred for offset.

Under § 303.102(c), a State must inform non-AFDC individuals in advance if the State will first use any offset amount to satisfy any unreimbursed AFDC or foster care maintenance payments. This is in accordance with current policy which allows States to use overdue support collected in non-AFDC cases either to satisfy unreimbursed assistance or to pay non-AFDC individuals.

In accordance with section 466(a)(3)(A) of the Act, § 303.10[redacted] requires States to send advance notice to the absent parent of the referral for offset and provide an opportunity to contest it. Section 303.102(e)(1) requires States to establish procedures for contesting the referral for offset. Paragraph (e)(2) requires States to have a mechanism for promptly reimbursing the absent parent if the offset amount is found to be in error or to exceed the amount of overdue support. Paragraph (e)(3) requires States to establish procedures, with respect to joint refunds, for ensuring that the absent parent's spouse has an opportunity to request a share of the refund, if appropriate, in accordance with State law.

Section 303.102(f) allows a State to charge a reasonable fee in non-AFDC cases to cover the cost of collecting overdue support using State income tax refund offset, in accordance with section 466(a)(3)(B) of the Act.

Section 303.102(g) sets forth the requirements specified in section 460(a)(3(B) of the Act for distribution of amounts offset. Paragraph (g)(1) requires States to distribute amounts collected from State tax refund offsets within a reasonable time period in accordance with the State law. In AFDC or foster care maintenance cases, distribution procedures at § 302.51(b)(4) and (5) or 302.52(b)(3), and (4) respectively, are applicable because the State must treat amounts collected under the State tax refund offset as past-due support. Under § 302.51.(b)(4), amounts collected in an AFDC case are retained by the State as reimbursement for past assistance payments. Section 302.51(b)(5) provides that any excess amounts remaining after the State is reimbursed in an AFDC case shall be paid to the family. Under § 302.52(b)(3), which governs distribution in foster care maintenance cases, the distribution is the same as for AFDC cases. Under § 302.52(b)(4), excess amounts remaining after the State is reimbursed for AFDC and foster care maintenance payments are retained by the State to be used in the child's best interest. In non-AFDC cases, the State may pay offset amounts to the family first or use them first to reimburse the State, depending on the State's method for distributing arrearage collections in non-AFDC cases. Under § 303.102(g)(2), if the amount collected is in excess of amounts required to be distributed, the excess amount must be refunded to the absent parent within a reasonable period. Paragraph (g)(3) of this section requires the State to credit amounts offset on individual payment records.

Section 303.102(h) requires the State agency responsible for processing State income tax refunds to notify the State IV-D agency of the absent parent's home address and social security number or numbers. The State IV-D agency must provide this information to any other State involved in enforcing the support order. This provision is required by the statute in section 466(a)(3)(C).

Imposition of Liens

We implemented section 466(a)(4) by adding 45 CFR 303.103, Procedures for the imposition of liens against real and personal property. Under paragraph (a) of this section, States must have in effect and use procedures for the imposition of liens against the real and personal property of an absent parent who owes overdue support and who resides or owns property in the State. Under paragraph (b), this procedure is applicable for cases not deemed inappropriate under guidelines that must be developed by the State and made generally available to the public.

Posting Security, Bonds or Guarantees

We implemented the requirements of section 466(a)(6) by adding 45 CFR 303.104, Procedures for posting security, bond or guarantee to secure payment of overdue support. In § 303.104(a), States must have in effect and use procedures under which absent parents must post security, bond, or give some other guarantee to secure payment of overdue support. This procedure is applicable for cases not considered inappropriate under the State's generally available guidelines. Examples of appropriate cases might be those in which the absent parent is self-employed or realizes income from commissions or other irregular payments, unless the income realized is so small that it would be counterproductive to require security because the cost of meeting the security would preclude payment of the support obligation. States should screen cases for use of this procedure very carefully in order to use it to its fullest advantage.

Paragraph (b) requires a State to give the absent parent advance notice, in full compliance with the State's procedural due process requirements, of the requirement to post security, bond or give some other guarantee and of the methods to use to contest the action. Under paragraph (c), this procedure is applicable for cases not deemed inappropriate under guidelines that must be developed by the State and made generally available to the public.

Making Information Available to Consumer Reporting Agencies

We implemented requirements of section 466(a)(7) by adding 45 CFR 303.105, Procedures for making information available to consumer reporting agencies. Under § 303.105(a), we define "consumer reporting agency" to mean any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports. This definition is mandated by the statute and found in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)).

Under paragraph (b), in accordance with section 466(a)(7) of the Act, States must use this procedure when an absent parent is more than $1,000 in arrears and information regarding the amount of overdue support owed by these absent parents is requested by such agencies. The cases in which information is sent to the consumer reporting agency may be further limited by the State under generally available guidelines used to determine cases inappropriate for this procedure.

States have the option of using such procedures in cases where the absent parent is less than $1,000 in arrears. Under paragraph (c), States may charge the agency a fee for providing this information. Any fee charged would be limited to the actual cost of providing the information. Under this requirement, a State may establish a uniform fee to be applied in all cases or develop a fee schedule based on the volume of requests. Paragraph (d) requires the State to provide the absent parent an advance notice and an opportunity to contest the accuracy of the information. Paragraph (e) requires the State to comply with all applicable procedural due process requirements of the State before releasing the information. The requirements imposed in paragraph (d) and (e) are required by the statute.

The requirements of this section do not preclude a State from obtaining information from consumer reporting agencies.

Dates of Collection

Section 302.51(a) provides that the date of collection is the date on which payment is received by the IV-D agency or the legal entity of the State or

political subdivision actually making the collection.

In interstate cases, the date of collection is the date the collection is received by the IV-D agency of the State in which the family is receiving aid. In any case in which collections are received by an entity other than the agency responsible for final distribution under § 302.51, the entity must transmit the collection within 10 days of receipt.

Incentive Payments

Under current section 458 of the Act, States and political subdivisions that enforce and collect support are eligible to receive as an incentive 12 percent of collections made on behalf of AFDC families. States deduct the incentive payment from the Federal share of collections before reimbursing the Federal government for its contribution toward the AFDC assistance payment. The incentive payment is thus set at a fixed rate of the support collection.

The fixed incentive payment rewards States for collections made in AFDC cases, but it does not encourage States to improve program efficiency and effectiveness. The great variance in the efficiency and effectiveness of Child Support Enforcement programs operated by States has become a matter of increasing concern. This disparity has led to a search for ways in which Federal funding might be used to encourage improvement in the performance of State Child Support Enforcement programs.

To encourage and reward States that operate Child Support Enforcement programs in an efficient and effective manner and to stimulate collections, Congress added a new section 454(22) and revised section 458 of the Act. Effective October 1, 1985, section 458 will replace the current incentives system with a new system under which States will receive a minimum incentive payment based on amounts collected on behalf of AFDC families and on behalf of non-AFDC families. States could also receive additional amounts above the minimum payment if their performance meets the criteria established by Congress and promulgated in this document. In addition, section 454(22) requires the State to pass through an appropriate share of its incentive payment to those political subdivisions within the State that financially participate in the program. Since the emphasis of the new system is on program performance, we believe that States will be encouraged to select and develop more effective and efficient methods of operating their programs.

Section 5(c)(2)(A) of the new statute provides that through FY 1985, States will receive incentives on AFDC collections retained to repay assistance payments, and the first $50 collected which is returned to the family in accordance with section 457(b) of the Act as amended by section 2640(b) of the Deficit Reduction Act of 1984. Prior to this provision, incentives were paid only on collections retained to reduce or repay assistance payments.

Revised section 458(b)(4) provides for a transition between the current funding system (12 percent incentives and 70 percent Federal matching rate) and the new system which becomes effective October 1, 1985. Under the transition provision, in FY 1986 and FY 1987, States will be paid an amount equal to the greater of the amount they qualify for under the new incentive and Federal matching rate system or 80 percent of the amount that they would have received under the 12 percent incentive payment (as amended by the new statute to allow incentives to be paid on collections retained to repay assistance payments, and the $50 which is passed through to the family under the Deficit Reduction Act of 1984 (Pub. L. 98-369)) and 70 percent matching rate system, had they remained in effect as they were in effect for FY 1985.

We implemented section 454(22) and the revised section 458 of the Act by adding § 302.55 and revising § 303.52, Incentive payments to States and political subdivisions. In accordance with the new State plan requirement in section 454(22), regulations at § 302.55 require the State plan to provide that, in order for the State to be eligible to receive incentive payments under § 303.52, if one or more political subdivisions participate in the cost of carrying out the IV-D program, those subdivisions shall be entitled to receive an appropriate share of any incentive payment made to the State for the period, as determined by the State in accordance with § 303.52(d), taking into account the efficiency and effectiveness of the political subdivision in carrying out its activities under the IV-D State plan. For example, the State may determine the appropriate share of each locality that participates in the costs of the program using a formula such as the one specified in statute and contained in this document at § 303.52(b). We strongly recommend that if States use that formula, they supplement each locality's share, if necessary, so that localities receive the total incentive payment which would be computed for their performance with respect to the criteria in § 303.52(d).

We implemented the revised section 458 of the Act by revising the current § 303.52. Paragraph (a) of § 303.52 contains four definitions. The definition of "political subdivision" is unchanged from the former § 303.52. To clarify the use of the terms "AFDC collections," "non-AFDC collections" and "total IV-D administrative costs," we added definitions of these terms to § 303.52(a). The definitions of AFDC and non-AFDC collections reflect the provision in section 458(b) which allows States to count collections made in foster care maintenance cases as AFDC collections for purposes of calculating incentive payments.

Paragraph (b) provides that OCSE will pay an incentive payment to a State for each fiscal year in recognition of AFDC collections and of non-AFDC collections. Under paragraph (b)(1), a portion of the State's incentive payment is computed as a percentage of its AFDC collections, and a portion of its incentive payment is computed as a percentage of its non-AFDC collections. The percentage, determined separately for AFDC and non-AFDC incentives, is based on the ratio of the State's AFDC and non-AFDC collections to the State's total IV-D administrative costs, in accordance with section 458(c) of the Act. The percent of collections payable as an incentive to a State in a given fiscal year is specified in the schedule contained in paragraph (b)(1). To implement section 458(b) of the Act, each State will receive an incentive payment of at least six percent of its AFDC and non-AFDC collections. The schedule also sets forth increased incentive payments equal to 5.5 percent of each type of collection if the ratio of AFDC or non-AFDC collections to total IV-D administrative costs equals at least 1.4. An additional incentive of one-half of one percent of AFDC and non-AFDC collections, up to a limit of 10 percent, will be paid for each full two-tenths by which the ratio exceeds 1.4. These two provisions governing increased incentive payments implement section 458(c) of the Act.

Under § 303.52(b)(2), the ratios of the State's AFDC and non-AFDC collections to total IV-D administrative costs will be truncated at one decimal place, since rounding is not permitted under the statute. For example, a State will receive an incentive of seven percent of its AFDC collections if the ratio of AFDC collections to total IV-D administrative costs is 1.79, because in order to receive an incentive of 7.5 percent, the ratio must be at least 1.8.

As provided under section 458(b), paragraph (b)(3) provides that the portion of the incentive payment paid to a State for non-AFDC collections may not exceed the portion paid the State for

AFDC collections in FY 1986 and 1987. However, in FY 1988, the non-AFDC portion of the incentive may equal 105 percent of the AFDC portion of the incentive; in FY 1989, the non-AFDC portion may equal 110 percent of the AFDC portion of the incentive; and in FY 1990 and thereafter, it may equal 115 percent of the AFDC portion of the State's incentive payment.

Under paragraph (b)(4), we list conditions that apply in the calculation of incentive payments. In paragraph (b)(4)(i), we specify that collection distributed and expenditures claimed by a State in a specified fiscal year will be those used to calculate the ratio under paragraph (b)(1).

In paragraph (b)(4)(ii), both the responding State and the initiating State receive credit for collections made in interstate cases. This provision, which implements section 458(d), is designed to encourage States to work interstate cases. It also represents a significant change from current law under which only the responding State receives the incentive payment.

In paragraph (b)(4)(iii), we exclude fees paid by individuals, recovered costs and program income such as interest earned on collections from IV-D expenditures when computing incentives. Excluding these amounts from IV-D expenditures is provided for in section 455(a) of the Act. Section 455(a) requires the Secretary, in determining the total amount expended by a State during a quarter, to exclude the total amount of any fees collected or other income resulting from services provided for both AFDC and non-AFDC cases under the title IV-D State plan. As provided for in section 458(c), paragraph (b)(4)(iv) allows States to exclude laboratory costs incurred in determining paternity from their total IV-D administrative costs when computing incentives. Congress provided this option in an effort to encourage States to pursue paternity cases which may not be cost-effective initially but which may pay off over a longer period of time and which also benefit the child. Lastly, under paragraph (b)(4)(v), States must add amounts expended by the State in carrying out specific interstate projects which are provided for under section 455(e) of the Act to their IV-D administrative expenditures when computing incentives. This is in accordance with section 455(e)(4) of the Act.

Under § 303.52(c)(1), we will estimate the amount of the incentive payment to be received by a State for the upcoming year, in accordance with section 458(e) which requires the Secretary to estimate the incentive payment due a State based on the best information available. In order to obtain this information, however, the reports currently submitted by the State must be revised. A revision is currently in process and will be submitted separately to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511).

In paragraph (c)(2), we require States to include one-quarter of the estimated annual incentive payment amount in their quarterly collection report which will result in a reduction to the Federal share of AFDC collections reported for that quarter. We require this because section 458(e) of the Act provides that estimated incentives be paid quarterly and because this practice is being used currently by States to obtain the 12 percent fixed incentive. Adjustments for any overpayments or underpayments which might have been made in prior quarters will be made in the following fiscal year. Thus, States will know in advance an estimate of the incentive payment they can expect to receive for a year which will allow them to budget for their title IV-D programs with some degree of certainty.

Paragraph (c)(3) provides that OCSE would calculate the State's actual incentive payment for the fiscal year after the end of the current fiscal year based on State performance data. If adjustments to the estimate made at the beginning of the fiscal year are necessary, the State's IV-A grant award will be reduced or increased to ensure that the State receives the appropriate incentive payment.

Paragraphs (c) (4) and (5) contain the special conditions relating to the payment of incentives during FY 1985, FY 1986, and FY 1987 which are specified in section 458(b)(4) of the Act and section 5(c)(2)(A) of the Child Support Enforcement Amendments of 1984, and described earlier in this preamble.

In accordance with section 454(22) of the Act, paragraph 303.52(d) requires States to calculate and promptly pay incentive payments to political subdivisions that participate in the costs of the IV-D program. Under paragraph (d)(1), we require the State to develop a standard methodology for passing through an appropriate share of its incentive payment to political subdivisions that participate in the costs of the IV-D program, taking into account the efficiency and effectiveness of the activities carried out under the State plan by the political subdivisions. Since many localities perform a substantial amount of work in the enforcement and collection of support, Congress specified in section 454(22) that they must receive an appropriate share of the State's incentive payment, if they participate in program costs. Therefore, under paragraph (d)(1) States must develop a standard methodology that best fits their needs.

Paragraph (d)(2) requires the State to seek local participation in the development of its standard methodology. We require this because we believe that local participation will ensure that the methodology is both fair and equitable. To comply, States may use whatever rulemaking process that includes an opportunity for review and comment that is available under State law or submit a draft methodology to participating localities for review and comment.

Under § 303.52(e), we require an initiating State to identify the case as an AFDC, non-AFDC or IV-E case at the time that the State asks the responding State to make a collection. We also require the initiating State to inform the responding State of any changes in the status of the case.

Lastly, in § 303.52(f) we require that States continue to use the time frame for the transmission of interstate collections and the codes required under the current § 303.52. Therefore, responding jurisdictions are required to forward collections to the initiating State within 10 days and include the code identifying the collecting State or political subdivision as defined by the Federal Information Processing Standards Publication or in the Worldwide Geographical Location Codes.

Reduction in the Federal Matching Rate

Federal funding is available to States for administrative costs incurred pursuant to a State plan for child support enforcement approved under title IV-D of the Act. This funding is authorized by section 455(a)(1) of the Act. Revised section 455(a)(1) reduces the Federal funding rate from 70 to 66 percent over a three-year period beginning in FY 1988.

Federal funding at the 70 percent rate is available for FY 1983 through FY 1987. The rate of 68 percent applies to FY 1988 and FY 1989. Each fiscal year thereafter the matching rate will be 66 percent. To implement this change, we defined the term "applicable matching rate" in 45 CFR Part 301 and substituted that phrase for the phrase "70 percent rate" wherever it appears in 45 CFR Parts 304 and 307. Also, we made a conforming change to § 305.22, State financial participation, to specify that the State share in funding the administrative costs

of the program will increase from 30 to 34 percent over the same period.

Collection of Past-Due Support From Federal Income Tax Refunds

Revised section 464 of the Act provides for the use of Federal income tax refund offsets to collect past-due support owed in non-AFDC and foster care cases, as well as AFDC cases. Previously, this means of collection was available for AFDC cases only. The statutory amendments apply with respect to refunds payable under section 6402 of the Internal Revenue Code of 1954 after December 31, 1985 and before January 1, 1991.

The regulations implement revised sections 454 and 464 of the Act by amending § 303.72 which governs the use of Federal income tax refund offset. The regulations do not amend § 302.60, the State plan requirement section, because § 302.60 is written broadly enough to cover submittal of AFDC, foster care maintenance and non-AFDC cases for refund offset.

Former § 303.72(a) defined "past-due support." We moved the definition to § 301.1 because it applies to all sections in the regulations governing Federal tax refund offset. We also added a sentence to the definition which, in non-AFDC cases, limits past due support which may be referred for Federal income tax refund offset to support due a minor child. Spousal support due in non-AFDC cases may not be referred for Federal tax refund offset. Section 303.72(b) contains the criteria for determining which past-due support qualifies for Federal tax refund offset. Current § 303.72(b)(1) states, in part, that past-due support qualifies for offset if the support has been assigned to the State making the referral. To implement revised section 464(a) of the Act, § 303.72(a)(1) permits States to refer amounts for offset if there has been an assignment under § 232.11 or section 471(a)(17) of the Act of an application for IV-D services under § 302.33 filed with the State IV-D agency.

The regulations at § 303.72(a)(2)(i) require the amount referred for offset in AFDC and foster care maintenance cases to be at least $150 as specified in current regulations for AFDC cases. The regulations at § 303.72(a) (2)(ii), (5) and (6) require any past-due support referred for offset in AFDC and foster care maintenance cases to have been delinquent for three months or longer require the State to verify the accuracy of the name, social security number and arrearage amount in all cases and provide that the IRS must have received notification of liability for past-due support in all cases.

Section 303.72(a)(3) requires, in non-AFDC cases: that the support is due to or on behalf of a minor, that the amount of past-due support is at least $500; at State option, that the amount has accrued since the State IV-D agency began to enforce the support order; and that the State has checked its records to determine if an AFDC or foster care maintenance assigned arrearage exists with respect to the non-AFDC individual or family. Section 464(c) limits the amount referred for offset in non-AFDC cases to support due to or on behalf of a minor. Spousal support owed in non-AFDC cases may not be referred for Federal income tax refund offset. Section 464(b)(2) of the Act imposes the $500 minimum amount to be referred for offset in non-AFDC cases and allows States to limit amounts referred to those accrued since the State began to enforce the order.

We used the Secretary's authority under section 1102 of the Act to add a new § 303.72(a)(3)(iv), which require States to check their records for assigned AFDC or foster care maintenance arrearages in non-AFDC cases. It is possible that a non-AFDC individual who has applied for IV-D services and is seeking Federal tax refund offset to satisfy past-due support may provide, locate or other information which the State previously lacked and therefore was unable to collect assigned arrearages which accrued when the non-AFDC individual was receiving AFDC or foster care maintenance payments. Section 303.72(a)(4) requires that the IV-D agency must have in its records a copy of the order and any modifications specifying the date of issuance and the amount of support; a copy of the payment record or an affidavit signed by the custodial parent attesting to the amount owed; and, in non-AFDC cases the current address of the custodial parent.

Section 303.72(b) sets forth requirements for notification OCSE of liability for past-due support. Paragraph (b)(1) which requires IV-D agencies to submit to OCSE, a notification on magnetic tape of liability for past-due support, by the date specified by OCSE in instructions. Paragraph (b)(2)(v) requires the notification of liability for past-due support to indicate for each delinquency whether the past-due support is due a non-AFDC individual who applies for services under § 302.33. Therefore, the State must certify for offset separately amounts to satisfy assigned AFDC and foster care arrearages and other arrearages due in non-AFDC cases. Paragraph (b)(3) addresses additional information a State may include in the notification of liability for past-due support. The remainder of paragraph (b) (formerly paragraph (c)) is unchanged by these regulations.

Former § 303.72(d), governing review of requests for offset was redesignated as § 303.72(c) and paragraph (d)(2), redesignated as paragraph (c)(2), is revised by deleting "December 1." Former §303.72(e), governing notification of changes in case status, is redesignated as § 303.72(d) and minor editorial changes have been made for consistency.

Former § 303.72(f) redesignated as § 303.72(e), requires OCSE or the State IV-D agency to send a pre-offset notice. Section 464(a)(3) of the Act specifies that the notice must include a statement informing the absent parent of the steps which may be taken to contest the State's determination that past-due support is owed or the amount of past-due support and the procedures to be followed in the case of a joint return to protect the share of the refund which is payable to another person. Section 303.72(e) implements the requirement for advance notice to the absent parent, including the procedures and deadlines for responding to the notice. These requirements provide the absent parent with an opportunity to be heard either in the submitting State or if the support order was issued in another State, in that State at the request of the absent parent if he or she does not agree that past-due support is owed or that the amount being referred for offset in accurate. In addition, § 303.72(e)(1) requires the State or OCSE to include a statement in the notice that, in the case of a joint return, the IRS will contact the absent parent's spouse at the time of offset regarding the steps to take to protect the share of the refund which may be payable to that spouse. Section 464(a) (1) and (2) of the Act specify that the IRS will notify the taxpayer that the withholding has been made. The IRS will also notify any individual who filed a joint return with the absent parent of the steps to take in order to sucure his or her proper share of the refund. Determination of the proper share of a refund depends on the community property laws of the jurisdiction where the absent parent and spouse reside. Section § 303.72(e)(2) sets forth IRS procedures with respect to notice at the time of offset.

The regulations at paragraph (f) address procedures for handling complaints received from absent parents in intrastate cases.

The IV-D agency must send a notice to the absent parent and, in non-AFDC cases the custodial parent, of the time

and place of the administrative review of the complaint and conduct the review to determine the validity of the complaint. If a complaint concerns a joint tax refund that has not yet been offset, the IV-D agency must inform the absent parent that the IRS will notify the absent parent's spouse at the time of offset regarding the steps to take to secure a proper shae of the refund. If the complaint concerns a joint tax refund which has already been offset, the IV-D agency must refer the absent parent to the IRS. If the review results in a deletion of, or a decrease in, the amount referred for offset, the IV-D agency must notify OCSE in writing of the deletion or modification. 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.

Section 303.72(g) of these regulations describes the procedures for contesting in interstate cases. If the absent parent requests an administrative review in the submitting State, the IV-D agency must meet the requirements of § 303.72(f). If the complaint cannot be resolved by the submitting State and the absent parent requests a review in the State with the order upon which the referral for offset is based, the submitting State must notify the State with the order of the request and provide all necessary information within 10 days of the absent parent's request for an administrative review. The State with the order sends a notice to the absent parent, and in non-AFDC cases the custodial parent, of the time and place of the administrative review, conducts the review, and makes a decision within 45 days of receipt of the notice and information from the submitting State.

The State with the order notifies OCSE in writing if the administrative review results in a deletion of or decrease in the offset amount and notifies the submitting State promptly upon resolution of a complaint. The submitting State is bound by the decision of the State with the order. If a refund is due the absent parent, the IV-D agency in the submitting State must take steps to refund any excess amount to the absent parent promptly. For purposes of incentive payments, collections will be treated as having been collected in full by both the submitting State and the State with the order.

OMB Circular A-87 (Cost Principles for State and Local Governments) Attachment B, Section D(1), precludes Federal funding for "any loss arising from uncollectable 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.

Paragraph (h) requires that collections made as a result of refund offset in AFDC and non-AFDC cases shall be distributed as past-due support under § 302.51(b) (4) and (5). Paragraph (h)(2) requires that collections made as a result of refund offset where there has been an assignment of this support obligation in a foster care maintenance case under section 471(a)(17) of the Act be distributed under § 302.25(b) (3) and (4). Under these provisions, a State must apply amounts offset to AFDC and foster care assigned arrearages submitted for offset first and only pay the non-AFDC family any amounts offset which have not been assigned. Although this distribution order is not specifically mandated in the Act, amended section 6402(c) of the Internal Revenue Code 1954 requires the IRS to apply amounts offset first to satisfy past-due support assigned to the State in AFDC and foster care maintenance cases. We believe Congress intended this distribution order to be followed by States. Therefore, under the authority granted to the Secretary in section 1102 of the Act, we require States to apply amounts offset first to past-due support assigned to the State and submitted for Federal tax refund offset. Paragraph (h)(3) requires States to inform individuals who apply for non-AFDC offset services how the amounts offset will be distributed.

Section 464(a)(3)(D) of the Act requires a State, in any case in which an amount is offset and the State subsequently determines that the amount certified for offset was in excess of the amount owed at the time of offset, to pay the excess to the absent parent or, in the case of amounts withheld on the basis of a joint return, jointly to the parties filing the return. Section 303.72(h)(4) requires IV-D agencies to repay excess amounts offset to the absent parent or the parties filing a joint return within a reasonable period in accordance with State law.

Section 464(a)(3)(B) of the Act provides that, when the Secretary of the Treasury offsets a refund that is based on a joint return, the Secretary of the Treasury shall notify the State that the offset is being made from a refund based upon a joint return and shall furnish the State with the names and addresses of each taxpayer filing the joint return. In the case of an offset made to satisfy past-due support in a non-AFDC case, the State may delay distribution of the offset amount until the State is notified that the other person filing the joint return has received his or her proper share of the refund, but the delay may not exceed six months. Section 464(a)(3)(C) of the Act provides that, when an offset is made, if the absent parent's spouse filing the joint return takes appropriate action to secure his or her proper share of the refund that was offset, the Secretaty of the Treasury will pay the spouse his or her share of the refund and deduct that amount from amounts payable to the State agency.

To implement section 464(a)(3)(B), § 303.72(h)(5) permits States to delay distribution in non-AFDC cases until notified that the unobligated spouse's proper share of the refund has been paid or for a period not to exceed six months from the date the State is informed that an offset is being made from a refund based on a joint return, whichever is earlier. States may wish to send absent parents a second notice at the time of offset to inform them that, unless the absent parent contacts the State within a certain period of time to contest the offset, the State will distribute the amount offset to the family. This may encourage prompt filing of amended returns.

The regulations do not change § 303.72(h)(6), which requires that offset amounts be applied only to satisfy arrearages specified in the advance notice to the absent parent except for minor editorial changes for consistency.

In accordance with section 464(b)(2)(B) of the Act, the regulations revise § 303.72(i), to permit the Secretary of the Treasury to impose a fee on the IV-D agency not to exceed $25 for each non-AFDC case submitted. Amended section 464(b)(1) of the Act provides that any fee paid to the Secretary of the Treasury may be used to reimburse appropriations which bore all or part of the cost of applying offset procedures. Section 454(6)(C) of the Act permits the State to impose a fee of not more than $25 in any case where the State requests offset from a Federal income tax refund to satisfy non-AFDC past-due support. To implement section 454(6)(C), § 303.72(i)(2) requires the State to inform any individual who applies for services under § 302.33 of the amount of any non-

AFDC user's fee charged for submitting past-due support for Federal tax refund offset, if the State IV-D agency chooses to charge a fee. The fee may not exceed $25.

Paragraph (j) of the regulations requires each State involved in a referral of past-due support for offset to comply with instructions issued by OCSE.

In accordance with section 464(a)(2)(B) of the Act, § 303.72(k) limits offset of Federal tax refunds to satisfy past-due support in non-AFDC cases to refunds payable under section 6402 of the Internal Revenue Code of 1954 after December 31, 1985, and before January 1, 1991.

Collection and Distribution of Support in Foster Care Maintenance Cases

Pub. L. 96-272, the Adoption Assistance and Child Welfare Act of 1980, transferred the AFDC foster care program from title IV-A of the Act to a new title IV-E and authorized Federal matching funds for this newly designated program. Because the foster care program was no longer funded or administered under title IV-A, the provision for assignment of support rights by recipients of AFDC required by section 402(a)(26) of the Act was no longer applicable for foster care cases. This meant that title IV-D child support services were not available to title IV-E foster care cases except as non-AFDC cases. In order to receive IV-D services as a non-AFDC case, the child's parent, legal guardian or the entity given custody of the foster child by judicial determination had to apply to the IV-D agency is accordance with section 454(6) of the Act. To remedy this problem, Congress, effective October 1, 1984, added a new section 471(a)(17) of the Act to require States to take all steps, where appropriate, to secure an assignment of support rights on behalf of a child receiving foster care maintenance payments under title IV-E of the Act and amended sections 454(4)(B), 456(a), 457 and 464(a) of the Act to require IV-D agencies to collect and distribute child support for IV-E foster care maintenance cases.

We implemented provisions of the new section 457(d) which generally parallels the distribution patterns specified for other IV-D collections by amending a number of sections of the IV-D program regulations and adding a new § 302.52, Distribution of support collected in title IV-E foster care maintenance cases. Under § 302.52(a), effective October 1, 1984, a State plan for child support must provide that the support collections in foster care maintenance cases must be distributed in accordance with § 302.51(a). The provisions of § 302.51(a) are general procedures applicable to distribution of support collected in AFDC cases. They require amounts collected to be treated first as payment on the required support obligation for the month in which the support is collected and, if there is excess over the monthly support obligation, it must be treated as payment on the required support obligation for previous months. Section 302.51(a) allows States the option of rounding off converted amount to whole dollars for distribution purposes. It also provides that the collection date is the date the collection is received by the IV-D agency or the legal entity of the State or political subdivision making the collection on behalf of the IV-D agency. In interstate cases, the date of collection is the date on which payment is received by the IV-D agency in the State in which the family is receiving aid.

We believe that distribution of collections in foster care maintenance cases would be facilitated by following the above requirements. Therefore, under the authority granted to the Secretary by section 1102 of the Act, the general requirements of § 302.51(a) apply to support collections made in foster care maintenance cases.

In accordance with section 457(d) of the Act, § 302.52(b) contains procedures specific to the distribution of support collections in foster care maintenance cases. Under paragraph (b)(1), amounts paid on required support obligations on behalf of children for whom foster care maintenance payments are being made under title IV-E must be retained by the State to reimburse it for foster care maintenance payments. The IV-D agency must determine the Federal share of these collections so that the State may reimburse the Federal government to the extent of its participation in financing the foster care maintenance payments.

Under paragraph (b)(2), if the amount collected is in excess of the monthly amount of the foster care maintenance payment but not the monthly support obligation, the State must pay the excess to the State agency responsible for supervising the child's placement and care. The State agency must then use the excess in a manner it determines to be in the best interests of the child. Although we believe the State agency should have wide latitude in determining how this amount might be used in the child's best interest, we have included the two options which are included in the statute: (1) Setting aside such amounts for the child's future needs; or (2) making all or part of the money available to the person responsible for meeting the child's day-to-day needs to be used for the child's benefit.

Under paragraph (b)(3), if the amount collected exceeds the amount required to be distributed under paragraphs (b)(1) and (2), the State must retain the excess to reimburse itself for past unreimbursed foster care maintenance payments made under title IV-E or past unreimbursed assistance rendered by the AFDC program under title IV-A. If past title IV-A or IV-E payments exceed the total support obligation owed, the State may not retain more than such obligation. If amounts are collected which represent support due prior to the first month the family received IV-A or IV-E assistance, the State may retain these amounts to reimburse the State for the difference between the support obligation and the past IV-A or IV-E payments. The IV-D agency must determine the Federal share of these collections so that the State may reimburse the Federal government to the extent of its participation in the assistance payments under title IV-A and foster care maintenance payments under title IV-E. Paragraph (b)(4) requires that any balance after the satisfaction of any unreimbursed payments must be paid to the State agency responsible for supervising the child's placement and care to be used in the child's best interest.

In paragraph (b)(5), we require that no payment can be considered a future payment unless the absent parent's assigned support obligations under sections 402(a)(26) and 471(a)(17) of the Act are fully satisfied. This is necessary for the proper implementation of the distribution procedures required by section 457(d) of the Act.

Lastly, in § 302.52(c), after the termination of the assignment made under section 471(a)(17) of the Act, States are required to attempt to collect amounts of accrued unpaid support which have been assigned. Amounts collected must be distributed as past-due support in accordance with paragraph (b)(3) and a State must give priority to collection of current support in this type of case. This requirement is consistent with the distribution process in section 457 of the Act.

We also amended § 302.31(a)(1) to require States to establish paternity of a child born out of wedlock with respect to whom there is an assignment under section 471(a)(17) of the Act. Although establishment of paternity in foster care maintenance cases is not specifically mandated in the amendments to the statute, we believe Congress intended that all IV-D services be available in

foster care maintenance cases, as was the case prior to enactment of title IV-E of the Act. We are also making a similar technical change to § 305.5. Since establishment of paternity is a necessary prerequisite to securing support, we are using the Secretary's authority under section 1102 of the Act to include these provisions.

In order to implement the State plan requirement in the revised section 454(4)(B) of the Act, we amended § 302.31(a)(2) to require a State plan for child support to provide that a State IV-D agency must undertake to secure support in cases where there is an assignment under section 471(a)(17) of the Act.

We deleted § 302.31(b)(1), which provided that the IV-D agency will not undertake to establish paternity or secure support in any case for which it has received notice from the IV-A agency that there has been a finding of good cause for failure to cooperate pursuant to section 402(a)(26)(B) of the Act, except as provided under paragraph (c). We believe paragraphs (b)(1) and (c), discussed below, are redundant.

Section 454(4)(B) was also amended to exempt States from securing support in foster care maintenance cases if the IV-A or IV-E agency determines that it is against the best interests of the child to do so. Consistent with this statutory requirement, we amended § 302.31(b)(2) to require that, upon receiving notice from the IV-A or IV-E agency that there has been a claim of good cause, the IV-D agency will suspend all activities to establish paternity or secure support in a foster care case until notified of a final determination by the IV-A or IV-E agency. Paragraph (b)(2) has been redesignated as paragraph (b). Further, under paragraph (c), a IV-D agency will not undertake to establish paternity or secure support in a foster care case for which it has received notice from the IV-A or IV-E agency that there has been a finding of good cause, unless there has been a determination by a State or local IV-A or IV-E agency that support enforcement could proceed without the participation of the relative.

To implement the revised section 456(a) of the Act, 45 CFR 302.50(a) is amended to provide that support rights assigned to the State under section 471(a)(17) of the Act constitute an obligation owed to the State by the individual responsible for providing the support. Changes to the regulations necessary to authorize offset of Federal income tax refunds to satisfy past-due support in foster care maintenance cases are discussed under the section of the preamble entitled "Collection of Past-Due Support from Federal Income Tax Refunds."

To ensure that required standards for program operations under 45 CFR Part 303 are established for foster care maintenance cases, we expanded the applicability of §§ 303.2 through 303.5 by deleting references to cases referred to the IV-D agency "pursuant to § 235.70 of this title." Since § 235.70 applies only to AFDC cases, by deleting reference to it in the introductory language of these sections, we have expanded the applicability of these sections to all cases referred to the IV-D agency, i.e., AFDC, non-AFDC, foster care maintenance and interstate cases.

Since the collection and distribution of child support in foster care cases will be undertaken as a part of a State's IV-D State plan, we amended § 304.20, Availability and rate of Federal financial participation, by revising paragraph (a)(1) to provide that Federal financial participation is available for necessary expenditures under a State title IV-D plan for the support enforcement services and activities provided in foster care cases where there is an assignment under section 471(a)(17) of the Act. We revised § 304.20(b)(1)(viii) (D) to include the procedures used to transfer collections from the IV-D agency to the IV-E agency.

Finally, we amended §§ 305.25, 305.27 and 305.38 to include foster care maintenance cases in the program audit.

Expansion of 90 Percent Funding for Systems

We revised 45 CFR Part 307, published in the Federal Register on August 22, 1984 (49 FR 33255) to implement the amendments made by section 6 of Pub. L. 98-378. Effective October 1, 1984, section 454(16) of the Act permits States to use computerized support enforcement systems to facilitate the development and improvement of the procedures to improve program effectiveness required under section 466(a) of the Act. Section 307.10 requires each CSES funded at the 90 percent rate to: (1) Be planned, designed, developed, installed or enhanced in accordance with an APD approved under § 307.15; and (2) control, account for, and monitor all the factors in the support collection and paternity determination process under the plan. To implement revised section 454(16) of the Act, § 307.10(b) permits a CSES established under § 307.10(a) to facilitate the development and improvement of the income withholding and other procedures required under section 466(a) of the Act through: (1) The monitoring of support payments; (2) the maintenance of accurate records on support payments; and (3) the prompt notice to appropriate officials of any support arrearages. We encourage States to develop or enhance statewide CSESs that encompass the procedures referred to above because the automation of such procedures will contribute to efficient and effective program operations. (See the discussion below regarding the availability of Federal funding at the 90 percent rate for these activities.)

The revised section 455(a)(3) of the Act (redesignated as section 455(a)(1)(B) of the Act) allows 90 percent Federal funding to expand the CSES to cover the procedures to improve program effectiveness required under section 466(a) of the Act. Section 307.30(a)(2) provides that 90 percent Federal funding is available for the planning, design, development, installation or enhancement of a CSES that meets the requirements specified in § 307.10(a). To implement revised section 455(a)(1)(B) of the Act, we have revised § 307.30(a)(2) to indicate that Federal funding at the 90 percent rate is also available for the optional expansion of the system as discussed above.

Previously, § 307.30(b) provided that 90 percent Federal funding was only available in expenditures for the rental or purchase of hardware or proprietary software used for the planning, design, development, installation or enhancement of a CSES described in § 307.10. Ninety percent Federal funding was not available in expenditures for hardware incurred during the operation of a CSES. Revised section 455(a)(1)(B) of the Act allows 90 percent Federal funding in expenditures incurred for the full cost of the hardware components of a system that meets the requirements prescribed in section 454(16) of the Act. Therefore, we have redesignated § 307.10(b) as § 307.10(b)(1) and revised the provision to make Federal funding available at the 90 percent rate in expenditures for the rental or purchase of hardware for the operation of a CSES as described in § 307.10(a) or § 307.10 (a) and (b). We believe that this change will encourage States to develop statewide CSESs. Ninety percent Federal funding is available in expenditures for hardware as described above incurred on or after October 1, 1984.

The revised section 455(a)(1)(B) of the Act is silent regarding the availability of Federal funding at the 90 percent rate in expenditures for the rental or purchase of proprietary software. Nonetheless, we believe that enhanced Federal funding should be available for the rental or purchase of proprietary software used for the planning, design, development,

installation, enhancement or operation of a CSES to the extent the software is necessary to operate hardware related to the CSES. Traditionally, the Department has issued instructions that prescribe the availability and rate of Federal funding for systems-related costs.

Therefore, we have added a new § 307.30(b)(2) to specify that, effective October 1, 1984, Federal funding is available at the 90 percent rate in expenditures for the rental or purchase of proprietary operating systems software necessary for the operation of hardware during the planning, design, development, installation, enhancement or operation of a computerized support enforcement system in accordance with the Computerized Support Enforcement (CSES) Guide for enhanced funding. The new § 307.30(b)(2) also indicates that Federal funding at the 90 percent rate is not available for proprietary applications software.

We have revised § 307.30(e) to delete the cross reference to 45 CFR 95.617 to reflect HHS policy regarding HHS rights to software funded at the 90 percent matching rate.

We made the following technical changes to the CSES regulations to conform with the changes discussed above. We revised § 307.15, Approval of advance planning documents for computerized support enforcement systems eligible for 90 percent FFP, by amending paragraphs (a), (b)(2) and (b)(5) to indicate that an APD must address the requirements in § 307.10(a) and the optional provision in § 307.10(b) when the State elects to meet such provisions. These changes reflect the revised § 307.10. We also amended § 307.15 by redesignating the citation "§ 307.10" as § 307.10(a) in paragraph (b)(7) of the section. This change also reflects the amendments to § 307.10.

We amended § 307.25, Review of computerized support enforcement systems eligible for 90 percent FFP, by revising paragraph (b) to indicate that the review of a CSES will include the optional provision prescribed in § 307.10(b) when a State has elected to meet that provision. Lastly, we amended § 307.35, Federal financial participation at the 70 percent rate for computerized support enforcement systems, by revising the title and paragraph (a) to indicate that Federal funding is available at the applicable matching rate for the operation of systems that encompass the optional provision prescribed in § 307.10(b).

Publicizing the Availability of Support Enforcement Services

Effective October 1, 1985, section 454(23) of the Act requires States to regularly and frequently publicize through public service announcements the availability of support enforcement services. To implement this State plan requirement, § 302.30 requires States to publicize support enforcement services available under the IV-D State plan through public service announcements on a regular and frequent basis. In accordance with section 454(23), announcements must include information concerning any application fees and a telephone number or address for obtaining further information. This regulation does not require IV-D agencies to conduct extensive or costly public relations or advertising campaigns. A number of States have already developed imaginative and effective public service announcements for television and radio which inform the public that title IV-D services are available to those who need them. The publicity required by these regulations will increase public awareness of available support enforcement services in all States. Federal matching funds are available for these expenditures.

Mandatory Collection of Spousal Support

Effective October 1, 1985, section 454(4)(B) and 454(6) of the Act require States to collect spousal support if a support order has been established, the child and spouse are living in the same household, and the support obligation established with respect to the child is being enforced under the State's IV-D plan. This amendment clarifies that spousal support must be collected only where child support is being collected along with spousal support. Prior to this amendment, collection of spousal support was optional for States.

Sections 302.17 and 302.31 were revised to require States to collect spousal support when it is part of the support order. References to collecting spousal support at State option were deleted from regulations. In addition, minor editorial changes were made to these sections. No changes are necessary to § 302.33, Individuals not otherwise eligible for paternity and support services, which specifies requirements for non-AFDC cases, because there is no reference to optional collection of spousal support in this section.

Accessing the Federal Parent Locator Service (PLS)

Amended section 453(f) of the Act permits States to access the Federal PLS without first exhausting State parent locator resources, effective August 16, 1984. These regulations delete § 302.35(d) which requires the State to make efforts to locate an absent parent through State resources before submitting a request to the Federal PLS. However, the State PLS is an important tool for locating absent parents and the State should use this resource and any other locate procedures whenever it is efficient to do so. In some situations, information from State resources may be more timely and therefore of greater value than Federal PLS information. This regulation provides States with the flexibility to use both the State and Federal PLS to their maximum effectiveness.

Continuing IV-D Services for Families That Lose AFDC Eligibility

Effective October 1, 1984, section 457(c)(1) of the Act requires States to continue to collect support payments for a period not to exceed three months from the month following the month in which the family ceased to receive assistance under the title IV-A program (a total of five months after the final AFDC payment) and pay all amounts collected representing current support to the family. Prior to this amendment, the State had the option to continue to collect support payments for this five-month period. Section 302.51(e) is revised to require (instead of permit) the IV-D agency to continue to provide all appropriate IV-D services during this five-month period. During this period, a State may not recover costs from any collections made. An AFDC family will generally benefit from the continuation of title IV-D enforcement services after they cease to receive AFDC payments. For example, continuing enforcement by the State IV-D agency will help prevent collections from lapsing and the family from returning to the AFDC rolls.

Current regulations at § 302.51(e)(2) are revised and redesignated as (e)(3). The new § 302.51(e)(2) requires the IV-D agency to notify the family, before the end of the mandatory service period, of the consequences of continuing to receive IV-D services, including available services, any fees, and cost recovery and distribution policies. The notice must also indicate that services will be continued unless the IV-D agency is notified to the contrary.

Revised section 457(c)(3) of the Act and § 302.51(e)(3) of the regulations

address State action after the five-month period described above. If the IV-D agency is authorized by the individual on whose behalf the services will be provided, the IV-D agency will continue to provide all appropriate services and pay the net amount collected to the family after deducting, at State option, any costs incurred in making the collection from the amount of any recovery made. Section 454(6)(C) of the Act, as amended by Pub. L. 97-248, permits States to recover costs from either the absent parent or the custodial parent.

In accordance with revised section 457(c)(2) of the Act, § 302.51(e)(3) prohibits State from requiring any formal application or imposing any application fee in cases where the State IV-D agency is authorized to continue to provide IV-D services after a family ceases to receive AFDC payments. The regulations continue to allow States to recover costs incurred in providing services from either the absent parent or the custodial parent because revised section 457(c)(2) of the Act specifies that amounts collected be paid to the family on the same basis as they are paid in other non-AFDC IV-D cases. Paragraph (e)(4) requires States to report collections under paragraph (e) as non-AFDC collections.

We also made a technical revision to § 302.32(b) to specify that the IV-D agency will notify the family that it will continue to provide services pursuant § 302.51(e)(1). Paragraph (b) currently indicates that the family will be notified if the State will continue to provide services.

Notice of Collections of Assigned Support

Effective October 1, 1985, revised section 454(5) of the Act requires States, at least annually, to provide notice of the amount of assigned support payments collected to current or former AFDC recipients. To implement this State plan requirement, § 302.54, Notice of collection of assigned suppport, requires States to provide an annual notice of the amount of support collected during the past year to individuals who have assigned rights to support under § 232.11. This notice must be sent to current AFDC recipients and former AFDC recipients for whom an assignment of support is still effective. We recommend that the notice contain the period for which payments were collected and a telephone number or address for obtaining further information. Under § 302.54(b), the notice must list separately support payments collected for each absent parent when more than one absent parent owes support to the family and indicate the amount of support collected which was paid to the family.

State Guidelines for Child Support Awards

We implemented section 467 of the Act by adding § 302.56, Guidelines for setting child support awards. As required in section 467, § 302.56(a) specifies that, as a condition for approval of its State plan, a State must establish guidelines by law or by judicial or administrative action for amounts of child support obligations set within the State. Section 467 of the Act also requires a State to make these guidelines available to all judges and other officials who have the power to determine child support awards, although the guidelines need not be made binding on them, and to furnish the Secretary with copies of its guidelines. These requirements are implemented by § 302.56 (b) and (d). Section 302.56(c) requires that guidelines be based on specific descriptive and numeric criteria and result in a computation of the support obligation. Although section 467 in not effective until October 1, 1987, States are encouraged to begin their consideration of appropriate guidelines as soon as possible. The guidelines developed by the State in accordance with § 302.56 may be used as the formula required under § 302.53. Under § 302.53, when there is no court order covering a support obligation, there must be a formula to be used by the State in determining the amount of the support obligation.

Imposition of Late Payment Fee on Absent Parents Who Owe Overdue Support

Effective September 1, 1984, section 454(21) of the Act allows a State IV-D plan to provide for the imposition of late payment fees on individuals who owe overdue support. We implemented section 454(21) by adding § 302.75, Procedures for the imposition of late payment fees on absent parents who owe overdue support. In § 302.75(a), the State plan may provide for imposition of a fee on absent parents who owe overdue support in cases in which the IV-D agency is attempting to collect support. In paragraph (b)(1) if a State opts to impose a fee, in accordance with section 454(21)(A), the fee shall be uniformly applied in an amount equal to at least 3 percent but not more than 6 percent of the amount of overdue support. In paragraph (b)(2), we require that the fee shall accrue as arrearages accumulate and shall not be reduced upon partial payment of overdue support. Further, the fee may only be collected after the full amount of overdue support is paid (as required by section 454(21)(B)) and after any requirements under State law for notice to the absent parent have been met. In accordance with section 454(21)(B) of the Act, under paragraph (b)(3), collection of the fee may not directly or indirectly reduce the amount of overdue support paid to the individual to whom it is owed. Under paragraph (b)(4), if the State imposes a late payment fee, it must be imposed in foster care, AFDC and non-AFDC cases. In accordance with section 454 of the Act, under paragraph (b)(5), a State may allow fees collected to be retained by the jurisdiction making the collection. Finally, in paragraph (b)(6), States must reduce their IV-D expenditures by any late payments fees collected. Excluding fees collected is required under section 455 of the Act and § 304.50. Only support which becomes overdue for any month beginning September 1, 1984, is subject to the late payment fee.

Payment of Support Through the IV-D Agency or Other Entity

We implemented section 466(c) by adding § 302.57, Procedures for the payment of support through the IV-D agency or other entity. In paragraph (a), in accordance with the statute, States may have in effect and use procedures for the payment of support through the State IV-D agency or the entity designated by the State to administer the State's withholding system upon the request of either the custodial parent or the absent parent regardless of whether or not arrearages exist or withholding procedures have been instituted. In paragraph (b), if a State implements these procedures, the State must monitor all amounts paid and dates of payments and record them on individual payment records, ensure prompt payment to the custodial parent when appropriate, and charge the parent requesting this service an annual fee not to exceed the lesser of $25 or the actual costs incurred by the State, in accordance with the statute.

State Commissions on Child Support

Section 15 of the new law requires the Governor of each State to appoint a State Commission on Child Support. The Commission must include representation from all aspects of the child support system and examine the functioning of the State child support system with regard to securing support and parental involvement for both AFDC and non-AFDC children. The commissions must submit to the Governor and make

available to the public, reports on their findings and recommendations no later than October 1, 1985. Costs of operating the commissions are not eligible for Federal matching funds.

The Secretary may waive the requirement for a commission at the request of a State if it is determined that the State has in place objective standards for child support obligations, has had a commission or council within the last five years, or is making satisfactory progress toward fully effective child support enforcement. This requirement is implemented in § 304.95.

Availability of Services and Application Fee for Non-AFDC Families

We revised § 302.33(a) to clarify the availability of services under that section and the individuals who are eligible to receive such services. We also revised § 302.33(a) to specify that, in an interstate case, only the initiating State may require an application.

To implement the new section 454(6)(B) of the Act, the regulations at § 302.33(c)(2) were clarified to require the State IV-D agency to charge an application fee for each individual who applies for services under § 302.33. Consistent with paragraph (a), § 302.33(c)(3) was changed to specify that, in an interstate case, the application fee is charged by the State where the individual applies for services under this section.

The following provisions of Pub. L. 98-378 are being implemented in separate regulations:

(1) Revisions to the audit, compliance and penalty provisions (see proposed regulations at 49 FR 39488 dated October 5, 1984);

(2) Requirement that the States charge a mandatory application fee, not to exceed $25, for furnishing IV-D services to individuals who are not AFDC recipients (see final regulations at 49 FR 36764 dated September 19, 1984; comments received on this requirement are addressed in this document);

(3) Requirement that State IV-D agencies petition to include medical support as part of any child support order whenever health care coverage is available to the obligated parent at a reasonable cost (see proposed regulations at 48 FR 35468 dated August 4, 1983); and

(4) Requirement that States must continue to provide Medicaid benefits for four calendar months beginning with the first month of AFDC ineligibility (regulations under development).

Public Comment

A notice of proposed rulemaking was published on September 19, 1984 (see 49 FR 36780). The comment period ended on November 19, 1984. One hundred fifty written comments were received. In addition, four public hearings were held to receive comments as listed below:

October 10—Chicago, Illinois
October 12—Dallas, Texas
October 15—Seattle, Washington
October 17—Washington, D.C.

Respondents included: 9 private citizens, 60 organizations including 46 advocacy groups, 78 State and local agencies, and 3 Federal agencies, some of whom commented by letter and some at the hearings.

Meetings to discuss the proposed regulations were held with the following groups: the National Child Support Enforcement Legislative Committee of the National Child Support Enforcement Association; the National Conference of State Legislatures; the National Governors' Association; the National Council of State Child Support Enforcement Administrators; the American Public Welfare Association; the National District Attorneys' Association; and the National Council of Juvenile and Family Court Judges.

We have grouped the comments by subject and discuss them below along with our responses.

Effective Dates

A number of commenters indicated that it is difficult to determine the various effective dates in these regulations and suggested that specific effective dates be added to appropriate sections of the regulations. To avoid confusion we have done so.

General Definitions (45 CFR 301.1)

Some commenters felt the definitions of "overdue support" and "past-due support" were cumbersome and unclear. One commenter felt that the definition of "overdue support" could be easily misinterpreted to allow a State to collect arrearages for children who are not minors only when using procedures for State tax offset, imposition of liens, posting security, bond or guarantee and providing information on the absent parent to consumer reporting agencies. Another commenter asked that we move the definition for "past-due support" to the section on Federal income tax refund offset. Many commenters objected to the term "absent parent" in these definitions because it does not reflect the relationship in "joint" or "shared" custody situations.

The definitions of "overdue support" and "past-due support" restate the definitions for these terms that are used in the Act. Therefore, we will continue to use these definitions, except for a minor change to correct any possible misinterpretation with respect to collecting overdue support when the child is no longer a minor. In addition, we chose not to move the definition for "past-due support" to 45 CFR 303.72 since it also applies to current regulations at 45 CFR 302.60. Upon review of the many comments received on the use of the term "absent parent," we considered replacing that term with the term "obligated parent". We decided not to make this change in the regulations, however, since the Act consistently uses the term "absent parent" and we believe that a change to "obligated parent" would be confusing in situations in which a support order has not yet been established or where shared custody occurs.

Mandatory State Procedures (45 CFR 302.70)

Section 466 of the Act and implementing regulations require that a State plan for child support enforcement must provide that the State has in effect and has implemented laws and procedures for: (1) Carrying out a program for the withholding of amounts from the wages of individuals to satisfy support obligations; (2) establishing and enforcing support orders by expedited processes; (3) obtaining overdue support from State income tax refunds; (4) imposing liens against real or personal property for amounts of overdue support; (5) establishing a child's paternity up to at least the child's 18th birthday; (6) requiring the absent parent to give security, post a bond or give some guarantee to secure payment of overdue support; (7) making available to consumer reporting agencies at their request information regarding the amount of support owed by an absent parent if the amount is more than $1,000; and (8) including a provision for wage withholding in child support orders issued or modified in the State.

Interstate Applicability of Procedures

A commenter asked if the procedures for imposing liens, posting bonds, offsetting State tax refunds and providing information to consumer reporting agenies (CRAs) are available for interstate cases.

Current regulations at 45 CFR 302.36 require States to cooperate with other States in locating absent parents, securing and enforcing support obligations and establishing paternity. Therefore, the procedures governing liens, bonds, State tax refund offset and

providing information to CRAs must be applied by a State when enforcing an order for another State to the extent allowed by the law of the enforcing State. For example, if the initiating State (the State where the custodial parent applies for services) forwards a case to the reponding State (the State where the absent parent resides), the responding State would review the case information and determine which enforcement technique or techniques would be best suited to the circumstances of the particular case.

Procedures for Wage or Income Withholding (45 CFR 303.100)

Withholding Requirement

The new statute and regulations require States to withhold wages in all IV–D cases when the amount overdue equals one month's support payment, or earlier at the absent parent's request or when the amount overdue is less than one month's payment in accordance with the State law. Withholding must occur without amendment to the order and must be given priority over other legal processes under State law. States must withhold amounts to satisfy the current support obligation and, once current support is met, an amount must be withheld to apply toward liquidation of arrearages. The total amount withheld, including any fee to the employer, may not exceed the limits set forth in section 303(b) of the Consumer Credit Protection Act (CCPA). The withholding must be carried out in full compliance with State procedural due process requirements.

We received many comments on the proposed wage withholding provisions. Some commenters sought clarification as to whether or not the provisions for withholding in cases being enforced under the State plan would be applicable only in cases applying for IV–D services after September, 1985. The provisions for wage withholding are applicable to all IV–D cases regardless of whether or not the case was a IV–D case before October, 1985.

Other commenters wanted clarification on the one-month overdue support requirement for new IV–D applicants seeking withholding. A State must take steps to implement wage withholding in new IV–D cases in which they can verify there is overdue support of one month or more.

We received several comments which were critical of the requirement that withholding must occur in all cases where the absent parent owed overdue support of one month or more. The commenters were concerned that because the regulations require that so much of the absent parent's wages must be withheld as are necessary to comply with the support order up to the maximum amount permitted under section 303(b) of the CCPA (15 U.S.C. 1673(b)), States would be forced to implement withholding in cases which will create economic hardships on the absent parent's second family. Some second families have low incomes and the commenters argued that by reducing this income these families might then qualify for food stamps or other forms of assistance. They urged that the regulation be more flexible in this area, giving the State an option as to whether or not to implement withholding in these cases.

The statute is very clear that withholding must be used in all cases being enforced under the State plan when the absent parent fails to make payments equal to the support payable for one month. We cannot, therefore, give States this type of flexibility.

Once the amount to be withheld satisfies the current month's obligation, we proposed that an additional amount must be withheld to be applied toward the liquidation of arrearages. Many commenters complained that withholding an amount to satisfy arrearages is not required by the statute and felt that withholding of amounts for arrears should be optional. Although it is not explicitly stated in the statute that an amount be withheld for arrears, a reading of House Report No. 98–527 on the statute clearly indicates that Congress intended that an amount be withheld for arrearages. Some commenters stated that in many cases amounts withheld from wages up to the CCPA limit would be inadequate to meet the current support obligation, let alone allow for payment of arrearages. Under the statute and regulations, current support must be withheld first. If current support is satisfied, an additional amount to be applied toward liquidation of arrearages must be withheld. If the CCPA limit is reached before the current support obligation is met, obviously amounts to satisfy arrearages cannot be withheld. Also, since the statute does not require States to withhold up to the maximum of the CCPA limit when establishing an amount to be withheld for arrearages, States have a great deal of flexibility in setting the amount.

Some commenters felt that the regulation should clearly state that the total amount to be withheld for current support, arrearages and the employer fee, if any, cannot exceed the maximum amount permitted under section 303(b) of the CCPA. We have specified in § 303.100(a)(3) that the total of these three amounts may not exceed the CCPA limits.

We received the greatest number of comments on the requirement that withholding must occur without the need for any amendment to the support order involved or any need for further action by the court or other entity that issued the support order. Most of these commenters felt that the requirement violated the due process requirements of States, which require orders to be returned to court for a hearing before withholding can be implemented. They pointed out that the regulations themselves require that withholding be carried out in full compliance with States' due process requirements. Many of these commenters also argued that their State laws require arrearage payments to be established through a formal court process at which a payment schedule is created based on the absent parent's ability to pay.

This regulatory provision is explicitly required by section 466(b)(2) of the Act. State laws which require that a support order must be returned to court must be changed to conform with the Federal statute. The statute and regulations still require protection of the absent parent's due process rights prior to implementing withholding. In response to other comments, this requirement does not rule out a judge signing a withholding order, if this process does not involve a hearing or a court appearance.

We received other comments suggesting that the provision prohibiting amendment of the support order to initiate withholding should apply only to a judgment entered after the effective date of the new law. Commenters felt this was necessary to avoid equal protection problems. Again, this provision is expressly provided for in section 466(b)(2) of the Act. The intent of the statute is to provide an administrative enforcement remedy which is equally available in all cases. We believe that applying special provisions to cases with judgments entered after the effective date of the new law would not be consistent with the new statute.

Because we have received many comments about this provision, we suggest that States enact a statute under which withholding would occur without the need for any amendment to the support orders involved. States might also send out a general notice to all absent parents informing them of the new State law, how it affects them, and how they might appeal. This provision of the Federal statute does not preclude a State from amending orders to incorporate withholding provisions, if

the case is before a court administrative tribunal for other purposes.

Many commenters expressed concern that it would not be possible to implement withholding in all existing cases by the October. 1985 effective date. We agree that identifying cases, locating individuals and employers, verifying information and proceeding with any appropriate withholding action in all existing cases by October 1, 1985 will entail a major effort, considering the magnitude of the caseloads requiring action in each State. However, States will have had over a year since enactment of Pub. L. 98–378 to prepare for the October 1, 1985 implementation date. Because the effective date is specified in the statute, we cannot allow States additional time to implement withholding in appropriate existing cases.

Procedures for Termination of Withholding and for Promptly Refunding Withheld Amounts

The regulations at § 303.100(a) (8) and (9) require States to have procedures for promptly terminating the withholding and for promptly refunding to absent parents amounts which have been improperly withheld.

Commenters on the termination procedures required by the proposed rule expressed concern about the requirement from two different points of view. One group of commenters felt that the termination requirements were not specific enough and needed to be more restrictive. The other group of commenters thought that States should be allowed to determine on what basis they would terminate withholdings. These commenters suggested that States would want to have the option not to initiate a withholding or to terminate an existing withholding based on the payment of all overdue support when it is a large amount, such as $5,000. Other commenters asked for the removal of all examples of circumstances for termination of withholding from the regulation. They suggested that OCSE issue an action transmittal at some later date, which could give examples and guidance in this area. In the final regulation as in the proposed rule, we do not specify criteria for termination of withholding and will allow States to develop their own criteria. We have deleted the examples of when termination of withholding would be appropriate to assure States the necessary flexibility in this area. However, we are specifying in § 303.100(a)(9) that payment of overdue support should not be the sole basis for termination of withholding. Moreover, we are specifying in § 303.100(a)(8) that payment of overdue support may not prevent an initial withholding. We believe that Congress has expressed its intention in House Report No. 98–527 that withholding be used to ensure regular payment as well as collect arrearages.

We also received comments on the proposed regulation provision which requires prompt refunding of improperly withheld amounts. These comments were related to the example of termination of withholding when the address of the children or custodial parent is unknown. The commenters suggested that amounts not be refunded to the absent parent if the custodial parent's address is unknown for a period of time due to the custodial parent moving and failing to inform the withholding agency promptly of the new address. We agree and suggest that those payments be held by the State until the absent parent obtains an order for termination of withholding or return of the payment. We also believe this type of problem will be rare and can be handled by informing custodial parents of the importance of promptly notifying the withholding agency of address changes.

Advance Notice to Absent Parents

The statute and regulations require States to give advance notice to absent parents of the potential withholding and the procedures to follow to contest the withholding. The notice must include the period within which the absent parent may contest the withholding and indicate that the only basis for contesting is a mistake of fact. The absent parent must be told the amount to be withheld and that the withholding applies to current and subsequent periods of employment. Finally, States are not required to provide advance notice if their existing withholding system in effect on August 16, 1984 met and continues to meet due process requirements under State law.

We received varied comments on the requirement for the advance notice to the absent parent. Some commenters complained that the regulation does not contain a time frame for when the advance notice must be sent. The State must take steps to send the advance notice to the absent parent on the date he or she fails to make payments in an amount equal to the support payable for one month. Although this date is found in paragraph (a)(4) of the regulation, we have revised paragraph (b)(1) to include this date as well.

Other commenters suggested that we should require States to state in the advance notice what method of contacting the State would be acceptable and give a specific time frame within which the absent parent must contact the State. The regulations at § 303.100(b)(1) (iii) and (iv) require States to inform the absent parent of the method and time frame for contesting the withholding.

Commenters suggested that the notice should include the total amount of the overdue support owed and that the regulations should give a definition of "mistakes of fact." The commenters believed that this information is essential and would prevent delays in the contesting process. We agree and have included these suggestions in the provision for the advance notice.

One State commented that some States are exempt from the advance notice requirement because they had a system of income withholding for child support purposes which meets State due process requirements in effect on the date of enactment of Pub. L. 98–378. The State felt that the regulations were unclear as to when the 45-day contesting period applies to these States. The State suggested that since they are exempt from the advance notice, they would have the option to set their own control date for the absent parent to contest. Also, the State felt that they should be permitted to allow absent parents the option to contest withholding on grounds beyond the limit of mistakes of fact as provided in the regulation.

While the advance notice provision and the 45-day contesting period do not apply to these States, all other provisions of the regulations are applicable. States which are not required to provide the advance notice required in this regulation must take steps to send a notice to the absent parent's employer on the date the parent owes one month of overdue support. These States must comply with existing procedures in the State which meet the procedural due process requirements of State law and which should provide the absent parent an opportunity to contest the withholding. We also emphasize that under the statute the grounds for contesting withholding are limited to mistakes of fact. We have revised § 303.100 (a) and (b) to clarify the requirements that States which are exempt from providing advance notice must meet.

Procedures for Contesting Withholding

The regulations at § 303.100(c) require that States establish procedures for use when an absent parent contests a withholding. At a minimum, the procedures must provide that a State, which is not exempt from providing advance notice to the absent parent,

within 45 days of giving advance notice to the individual, will: (1) Give the individual an opportunity to present his or her case; (2) decide if the withholding will occur based on evaluation of the facts; (3) notify the individual whether or not the withholding is to occur and, if so, include in the notice the time frame within which withholding will begin and the information provided to the employer in the notice required in § 303.100(d); and (4) notify the employer to begin withholding. The last procedure was added in response to comments suggesting that we require States to send the required notice to the employer within the 45-day time frame. We also specified in § 303.100(d)(2) that, if the absent parent does not contest the withholding within the time period specified in the advance notice, the State must immediately send the notice to the employer.

We received comments from individuals and organizations which requested that the procedures required for contesting withholding include many additional requirements such as not allowing a hearing, requiring a written notice be sent to both the absent and custodial parent and allowing the custodial parent to attend whatever type of forum is provided for contesting.

OCSE has decided to keep the required procedures at the very minimum needed to comply with the statute in order to give States the greatest flexibility in developing their procedures. We do encourage States to adopt some of these suggestions (such as sending a notice to both parties and allowing the custodial parent to attend and participate in the review).

Notice to the Employer

Section 466(b)(6) of the Act sets forth specific requirements for notice to the employer as well as responsibilities of the employer and the State in withholding wages. To meet these requirements the regulation specifies that the employer notice contain the elements listed in § 303.100(d)(1).

Commenters asked that we clarify in the regulation that the notice to employers must inform them that the amount actually withheld for support and the employer's fee may not exceed the maximum amounts permitted under section 303(b) of the CCPA. We believe these commenters misunderstood the meaning of the phrase "the amount actually withheld for support and other purposes" in paragraph (d)(1)(i). We intended this phrase to include the fee and other deductions for debts from the absent parent's wages, but we have revised the paragraph to refer to the fee directly.

A number of commenters objected to the requirement that employers must send withheld amounts at the same time the absent parent is paid. Some of these commenters felt this requirement was in conflict with section 466(b)(6)(B) of the Act which requires the State to simplify the withholding process for employers to the greatest extent possible. Others argued that because employers use such varied pay periods, bi-weekly, weekly and sometimes monthly, this requirement would cause unnecessary paperwork, accounting problems and additional staff time for withholding agencies. Another commenter was concerned that the requirement would force employers to charge a higher fee for withholding than they would otherwise because the provision increases the costs and burdens of withholding. Each delay in forwarding a collection in turn delays final distribution of that collection. We believe requiring employers, as well as any entity which receives collections and is not responsible for final distribution, to forward collections within 10 days of their receipt is essential to timely distribution. We have, therefore, revised this requirement to provide that employers must send withheld amounts to the State within 10 days of the date the absent parent is paid.

Some commenters asked that we specify the maximum amount that an employer could withhold as a fee for withholding. The statute and § 303.100(d)(1)(iii) specify that the State must establish the amount of the fee if it opts to allow employers to withhold a fee. Generally, the fee for withholding is minimal—$1 to $2 per withholding—in States which presently have such laws.

In the area of employers' liability for failing to withhold wages or to forward withheld amounts, we received several suggestions, including that the regulations specify who is liable in situations such as employer bankruptcy, stolen withheld monies and misdirected checks. We believe these issues should be handled by States under State law and procedures.

We received other comments on this section which suggested that we require that employers be offered an opportunity to contest withholding. The statute does not authorize employers to contest withholding. We strongly urge States to advise employers concerning withholding and to develop good working relationships with them. We believe this will ensure cooperation from employers.

We received a comment critical of the provision which requires that withholding for support have priority over any other legal process under State law against the same wages. This commenter suggested that the requirement is unconstitutional, but did not explain in what way. This provision in the regulation is required by section 466(b)(7) of the Act.

Several commenters asked that we clarify the provision in the regulation which allows employers to combine withheld amounts from absent parents' wages in a single payment. We believe the provision in clear and allows the employer to send one check for a single amount to the appropriate withholding agency, along with a list of amounts attributable to each absent parent. This is a convenient method for employers and avoids the necessity of sending a separate check for each absent parent.

The provision in the regulation concerning the method of handling situations involving more than one withholding against a single absent parent was the focus of a number of comments. We proposed that in these situations the employer must comply on a first-come-first-served basis up to the limits imposed under section 303(b) of the CCPA. All of the commenters objected to this proposal. Some objected to this method because they felt it would at times be unfair to families who may need support more than others. Also, they felt that the method did not put a priority on current support. Some other commenters were concerned that the method put the employer in the middle of support disputes. As an alternative, several commenters suggested that all affected families should receive a prorated share of the withholding up to the CCPA limits.

We agree with the concerns raised by these commenters and we have changed this provision to specify that in situations where there are multiple withholdings against the wages of the same absent parent, current support must be paid first and the amounts available for withholding to meet current support must be allocated among the families. This must be done before amounts are withheld for arrearages, which also must be allocated if withheld. In addition we are requiring the State to control this function rather than the employer and are giving States flexibility to determine the best method of allocating amounts available for withholding. For example, the State could prorate the amounts among all cases, apply a first come first serve basis or use some other mechanism, such as giving top priority to support orders where the custodial parent in receiving AFDC, as AFDC status may indicate special financial

need. States are in the best position to determine which method is the most appropriate for their caseloads. The employer will receive a notice to withhold one amount and the State must prorate that amount appropriately upon its receipt.

One State commented that the requirement that employers implement withholding no later than the first pay period that occurs 14 days following the date that the notice to the employer was mailed conflicts with its State law. They pointed out that under the laws of many States an individual is not responsible until receipt of notice and suggested we change the withholding trigger to the date of receipt by the employer. We realize that some States may have to pass laws to implement withholding which will provide exceptions to their general State laws in some areas, but for uniformity and efficient implementation, we believe it is important to retain the provision based on the mailing date of the notice. Other commenters complained that this provision conflicts with section 466(b)(6)(B) of the Act which requires States to simplify the process for employers as much as possible. We do not think this requirement complicates the withholding process for employers and believe it affords employers ample time to implement withholding.

Commenters asked that we require employers to notify custodial parents as well as the State when the absent parent terminates employment and provide custodial parents with the same information sent to the State. We believe this is a burden for employers. States could notify custodial parents if that is permitted under State law.

Administration of Wage Withholding Procedures

Section 303.100(e) of the regulations outlines the procedures for the administration of withholding as provided by section 466(b)(5) of the Act. The regulations require the State to designate a public or private agency to administer withholding in accordance with procedures specified by the State for keeping adequate records to document, track, and monitor the collection and distribution of amounts withheld. The designee for withholding must distribute withheld amounts in accordance with section 457 of the Act.

We received several comments which requested that we clarify what is meant by "administer" in the context of these regulations. These commenters wanted to know if enforcement and collection functions must be included in the functions performed by the withholding agency. The State's withholding system must be administered by an agency that is ultimately responsible to ensure that all necessary functions are performed. This agency either must perform the enforcement and collection functions itself or it may delegate the functions under its supervision necessary to carry out withholding to another public agency or private entity. Any such entity must be publicly accountable for its actions. These commenters also stated that the regulations give the impression that the withholding agency must be one statewide organization. There must be one State withholding agency within the State. However, we have clarified in paragraph (e) that the State may designate local entities to administer withholding in each jurisdiction under the supervision of the State withholding agency.

Commenters asked that we specify a time limit by which the withholding entity must distribute withheld amounts. They argued that the word "promptly" is vague and therefore meaningless. We believe that "promptly" has a generally understood meaning which would allow OCSE to enforce this regulation adequately. We believe that it is not reasonable to specify an exact time limit because of the wide variety of State practices and organizational structures involved. In addition, section 466(b)(5) of the Act requires "prompt" distribution.

One State objected to the provision in paragraph (e) which requires the State to reduce is IV-D expenditures by any interest earned by the State designee on withheld amounts. The State felt that this provision was contrary to the provisions of the Debt Collection Act (42 U.S.C. 4213) and 45 CFR 74.47(b). These two requirements pertain to interest earned on advances of grant funds and are not applicable to other interest such as interest on support collections. The treatment of interest earned on support collections specified in paragraph (e) complies with section 455 of the Act.

Interstate Withholding

Section 303.100(g) of the regulation implements section 466(b)(9) of the Act which requires States to extend their withholding systems to include withholding in cases where the support orders were issued in other States. This provision is necessary to ensure that support owed to children and their custodial parents will be collected without regard to the residence of the absent parents.

The provisions on interstate withholding were addressed by several commenters who expressed a wide range of concerns. Some commenters felt the interstate provisions have no statutory base. The statutory base of these provisions is in section 466(b)(9) of the Act which requires States to extend their withholding systems to include income derived within the State in cases where the applicable support orders were issued in other States, in order to assure that support owed by absent parents will be collected without regard to the residence of the child for whom the support is payable or of the child's custodial parent.

Various other commenters complained that the system as outlined in the proposed regulation is unworkable. They argued that involving three States (the State where the custodial parent applies for IV-D services, the State with the order, and the State where the absent parent is employed) in the process on an on-going basis is unnecessary. They questioned whether incentives would be available for all three States. In response to these comments, we have changed the regulation to provide that the State where the custodial parent applies for IV-D services will notify the State where the absent parent is employed to implement withholding. If the State where the custodial parent applies is not the State where the support order was entered, we are requiring that, upon request of the State where the custodial parent applies for services, the State where the order was issued must promptly provide all information necessary to implement withholding.

The statute only provides for the collecting State and the State where the custodial parent applies for IV-D services to receive incentives in interstate cases. Thus, in interstate wage withholding cases, incentives will be paid to the State where the custodial parent applies and the State where the absent parent is employed, since that State will collect the support. Although the State where the order was entered is not entitled to incentives, it must cooperate with other States in accordance with 45 CFR 302.36.

We have been asked by commenters to require that the information provided by the State where the order was issued include, at a minimum, a copy of the support order and the payment record. We agree that this type of information is necessary. Therefore, we have changed this provision to specifically require that a copy of the order and a statement of arrearages be included. These two items are also included in the model statute for interstate withholding developed by the American Bar Association.

In addition, because we believe it is not practical, we have not included specific time frames (such as 90 days

from start to first check received) for interstate withholding as suggested by several commenters. We have, however, added the word "promptly" to all steps of the process. Further, the addition of time frames to the general withholding process should help expedite withholding in all cases. We believe these changes are adequate to ensure timely processing of interestate cases.

These same commenters also requested that the regulation require States to indicate exactly which entity is charged with carrying out withholding. We already require in § 303.100(e)(1) that the State designate an agency to be responsible for withholding.

Several commenters questioned whether States would be prohibited from using their long arm statutes in interstate cases. These commenters felt that the IV-D agency in one State should be able to contact an employer in another State directly. This is a matter of State law and we agree that a State may use its long arm statute for wage withholding if the State 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. Another commenter suggested that we require States to exhaust all other methods for enforcement available to them before using interstate withholding. The statute requires withholding to be implemented in intrastate and interstate IV-D cases when one months's support is overdue.

It was suggested by one commenter that we specify in paragraph (g)(7) addressing which State laws apply in interstate cases that, when withholding is implemented, it must be for the full amount of current support, include an amount for arrearages and it must be implemented without amendment to the support order. We believe that other provisions of the regulations are clear on these points. However, we have revised paragraph (g)(7) to specify that the law of the State where the order was entered determines when withholding must be implemented and the law of the State where the absent parent is employed applies in other respects. This includes the determination of the amount that may be withheld, in addition to current support, to apply toward liquidation of arrearages.

General Comments

OCSE received serveral requests for clarification on the provision requiring that all child support orders issued or modified in the State after October 1, 1985 must have a provision for withholding of wages in order to ensure that withholding is available without the necessity of filing an application for IV-D services if overdue support occurs. These commenters wanted to know the relationship between these cases and IV-D cases. This provision refers to all cases and is intended to ensure that withholding be available as an enforcement technique for support orders in the State which are not being enforced under the State's child support enforcement program. The Federal requirements for withholding outlined in the preceding paragraphs are not applicable to these cases unless an application for IV-D services is made or the States choose to extend the procedures applicable to IV-D cases to all child support enforcement efforts in the State. We encourage States to enact laws governing withholding that apply to all child support cases in the State, both IV-D and non-IV-D cases.

Many commenters were concerned that this particular provision raises constitutional questions because they felt it creates two classes in child support cases. Section 466(a)(8) of the Act does not create any classifications at all. It merely requires that all child support orders issued or modified in the State after October 1, 1985 include provisions for income withholding.

Finally, we had two general comments concerning cases in which the absent parent has two employers suggesting that we require States to include penalties in their State plan for employers who fail to carry out their responsibilities in withholding cases. In response to the latter comment, States must include copies of laws governing penalties for employers as part of their State plan in accordance with 45 CFR 302.17. In cases in which the absent parent has more than one source of income, States should follow the procedures outlined in the withholding regulations and notify the primary employer to withhold an appropriate amount to meet the obligation and provide for a payment toward liquidation of overdue support. If the amount actually withheld is inadequate to meet the current obligation and an amount for arrearages, the State should initiate a second withholding action with the other employer.

Expedited Processes (45 CFR 303.101)

Under the proposed regulations, we required States to select either an administrative or quasi-judicial process to establish and enforce support orders and, at State option, to establish paternity. In addition, we also limited use of the State's judicial system to appellate review of determinations made under the State's expedited process and imposed many requirements specific to either an administrative or quasi-judicial process. These final regulations amend many of the provisions in the proposed regulations and, in effect, allow States more flexibility in designing a process or combination of processes that meet their needs. States may request an exemption from using an expedited process in one or more political subdivisions in the State based on the effectiveness and timeliness of support order issuance and enforcement within the political subdivision.

Some commenters believed that the regulations went beyond the intent of the statute by imposing too many requirements on expedited processes. Others indicated that the requirements for the two types of expedited processes should be parallel.

While we do not believe the proposed regulation was beyond the intent of the staute, we recognize the need for fexibility on the part of the States to design expedited processes in light of State and local conditions. Therefore, we revised the proposed regulations on expedited processes to eliminate many restrictions and to make those requirements that were specific to either an administrative or quasi-judicial process apply to expedited processes in general. The requirements which now apply to expedited processes in general are that: Orders established under expedited process must have the same force and effect under State law as orders established by full judicial process; the due process rights of all parties must be protected; the parties must be provided a copy of the order; there must be written procedures for ensuring the qualifications of presiding officers; recommendations of presiding officers may be ratified by a judge; and actions taken under the State's expedited processes may be reviewed under the State's judicial system.

In addition, we revised the requirements that were formerly specific to judge surrogates' authority under quasi-judicial process to apply to the functions performed under expedited processes in general. The functions performed under expedited processes must include at a minimum: Taking testimony and establishing a record; evaluating evidence and making recommendations or decisions to establish and enforce orders; accepting voluntary acknowledgements of support liability and stipulated agreements setting the amount of support to be paid; entering default orders if the absent parent does not respond to notice or other State process within a reasonable

period of time specified by the State; and, if the State establishes paternity using its expedited processes, accepting voluntary acknowledgement of paternity.

Representatives from various groups including the National Governors' Association and several other commenters felt that the proposed regulations should be directed toward time frames and not the structure of systems. In response to the comments received on this section, we removed many of the structural requirements contained in the proposed regulations that were specific to either an administrative or quasi-judicial process. After careful consideration of the comments and Congressional intent that the Secretary measure a State's compliance with the expedited processes requirement "primarily on the basis of the results it produces" (see Conf. Rep. 98-925, p.36), we added a standard in the regulations to ensure that States' expedited processes are timely. A State's process or combination of processes is expedited when it completes support order establishment or enforcement actions from case filing to disposition in 90 percent of all cases in 3 months, 98 percent in 6 months and 100 percent in 12 months. This standard was approved by the House of Delegates of the American Bar Association and is considered by that group to be an appropriate measure of the length of time in which domestic relations cases should be completed from case filing to disposition. Compliance with this standard will be measured on a disaggregated basis (e.g., court-by-court of similar level) rather than for the State as a whole.

We are not defining the terms "case filing" and "disposition" in the regulations because States may use different terms to describe the events associated with these terms. However, by "case filing" we mean the date on which the case is officially acknowledged or action is taken to invoke the jurisdiction of the State's expedited process system, for example, the date on which the case is given a docket or case number, or notice of support liability is sent or other official action is taken which initiates the process of establishing or enforcing a support obligated. "Disposition" means the date on which a support obligation or enforcement order is officially established and/or recorded.

Several commenters asked if Federal funding is available for administrative costs associated with decisionmakers in administrative and expedited judicial processes. Consistent with our current policy, Federal funding remains available for the costs of decisionmakers in an administrative process. Federal funding is also available for decisionmakers in an expedited judicial process. Therefore, we have revised 45 CFR 304.21(b) to specify that Federal funding is not available for compensation (salary and fringe benefits) of judges only.

Several commenters indicated that the proposed regulations fail to specify methods of enforcement under expedited processes. In accordance with the requirements at § 303.101(b) of the final regulations, States are responsible for ensuring that appropriate enforcement remedies are included under their expedited processes.

An advocacy group recommended that we provide States with technical assistance in implementing expedited processes for support cases and especially for paternity cases. State and local IV-D agencies may request technical assistance from the appropriate OCSE Regional Office in the development and implementation of an expedited process.

One commenter recommended that we allow public hearings at the local level to ensure input from residents on the type of expedited process a locality may adopt. Since there is nothing in the new law prohibiting public hearings at the State and local level, States and localities may elect to conduct public hearings to receive comment and local input on the type of expedited process that would be appropriate in a particular area. We suggest that the commenter contact State and local IV-D agencies or other State officials or legislators to request local public hearings on expedited processes.

One commenter asked if a State's expedited process would apply to non-IV-D cases as well as IV-D cases. The new law requires States to have expedited processes for establishing and enforcing support orders in IV-D cases. Since the new law does not specifically prohibit a State from expanding its process to include non-IV-D cases, the State may elect to do so. However, a State would not be eligible to receive Federal reimbursement for the costs associated with handling and resolving support matters in non-IV-D cases.

Several commenters asked that we clarify the definitions for "expedited process" and "quasi-judicial" because, as defined in the proposed regulations, they each refer to the other. Other commenters believed that the definitions for "hearing officer" and "judge surrogates" limit without reason those who may issue or recommend support orders.

Except for the definition of "expedited processes," which was expanded to incorporate a standard to measure the timeliness and effectiveness of support order establishment and enforcement action under the State's expedited processes, we deleted all of the definitions from this section because we agree they limit State flexibility needlessly.

Several commenters indicated that the proposed regulations failed to provide for incorporating orders that originated from the judicial process into the State's expedited process. Since the new law requires States to enforce support orders using expedited processes, although it is not explicitly stated in the final regulation, any order entered in another forum on behalf of a IV-D client would be enforceable under the State's expedited process.

Many commenters asked that the regulations allow States to create an expedited process within their judicial systems. Some States and one advocacy group felt that limiting States to the selection of either an administrative or quasi-judicial process was contrary to the law since Congress never intended a State's expedited process to be the sole forum for resolving all support matters.

We intended in the proposed regulations that States select either an administrative or quasi-judicial process to establish and enforce support orders and that, if the State selected a quasi-judicial process, it would operate within the State's judicial system. Although Congress did not expect a State's expedited process to be the sole forum for resolving all support matters, it did intend that the process would improve the State's program effectiveness and that the overall processing time of support order establishment and enforcement actions would be reduced in comparison to the processing time under the State's judicial system. To eliminate confusion and to clarify the use of an expedited process within a State's judicial system, we made a number of editorial and substantive changes to this section. We deleted the provision that limited States to selection of either an administrative or quasi-judicial process. As a result, the State may use an administrative or expedited judicial process or both processes as long as the selected process meets the definition of an "expedited process" contained in these regulations in addition to meeting the other requirements of this section.

Several commenters asked if a State could use an administrative process for

some cases and expedited judicial process for other cases that appear more complicated to resolve. A State may implement two processes and apply the procedures of those processes separately depending upon case circumstances, provided that both processes are effective and expeditious and all IV-D cases receive necessary services.

An advocacy group questioned the use of expedited processes for determining paternity because addtional due process protections are needed in paternity proceedings. This commenter and one other recommended that we either add additional requirements for determining paternity under an expedited process or limit paternity proceedings under an expedited process to uncontested cases.

States that opt to include paternity establishment in their expedited process must provide whatever additional due process requirements are necessary for the protection of the parties involved in the proceedings. However, if a case involves non-support-related issues such as countersuits by the putative father, the State may refer the case to its judicial system.

Several commenters indicated that the proposed regulations fail to address the handling of interstate cases under expedited process. Because of the variances among the expedited processes that States may implement, we did not prescribe criteria or methods for handling interstate cases. However, States are required to include interstate cases under their expedited processes and to process these cases as effectively and quickly as intrastate cases are processed.

The majority of comments received on this section pertained to the requirement limiting the State's judicial system to appellate review of support orders established and enforcement actions taken under the State's expedited process. Many commenters asked that we delete this requirement. Others felt that it makes the support award process more burdensome because it creates a two-tier system whereby complicated cases would have the support determined under the State's expedited process and other issues in the case such as property settlements, custody, visitation, etc. determined under the State's juidicial system. Another commenter felt that the proposed judicial limits were not in the best interests of the child.

We recognize that in some cases resolution of issues such as property settlements must be accomplished in order to determine an appropriate support award amount. For these issues, States may use their judicial systems. However, to protect the interests of the children involved, States must determine temporary support awards in these cases under the expedited process before referring the more complex issues to the full judicial system for resolution. We have added this requirement to § 303.101(b) of these regulations.

Several commenters indicated the State's expedited processes should provide for bench warrants, default orders, power to subpoena, and contempt of court proceedings. Other commenters indicated that contempt powers and powers to jail are seldom granted outside the judicial system and recommended that the regulations prohibit such proceedings under an expedited process.

Because States' laws and judicial systems vary greatly, we did not require States' expedited processes to provide for bench warrants and subpoena and contempt powers. However, we do require presiding officials to enter default orders if the absent parent does not respond to notice or some other State process within a reasonable period of time. In addition, these regulations permit States to structure their enforcement mechanisms to include contempt and subpoena powers and bench warrants under their expedited process, provided State law allows this. A State that includes these enforcement mechanisms under its expedited process must provide any additional due process requirements necessary to protect the parties involved in these proceedings.

Several commenters asked if existing orders established by a court could be returned to court for modification. Existing orders may be modified under the expedited process in effect in the State or the State may modify them by court process. We encourage States to modify existing court orders in the most effective and expeditious manner.

One commenter asked that we define "same force and effect" when comparing orders established by expedited process and those established by judicial process. "Same force and effect" means that orders issued under the State's expedited process must be recognized as valid and therefore equally enforceable under the State's judicial system.

Several commenters felt the proposed regulations fail to protect the rights of custodial parents who can also suffer from unfair decisions. We extended the provision pertaining to due process, which previously applied only to absent parents, to include protections for all parties involved in cases resolved under the State's expedited process. This will ensure that the rights of custodial parents as well as absent parents will be protected in accordance with State law.

Many commenters objected to the requirement that the administrative agency must use the State's generally applicable administrative procedures. Some commenters indicated that the State IV-D agency can establish administrative procedures better suited to child support enforcement cases than the State's "generally applicable procedures." Others were confused about the meaning of this requirement and felt that they were required to comply with the Federal Administrative Procedure Act.

We agree this section was confusing. We want to allow States flexibility in establishing administrative procedures that are appropriate for the handling and processing of child support cases. Therefore, we deleted this requirement.

Several commenters asked that we clarify what we mean by "taking testimony and establishing a record" under the States's expedited process. One commenter asked if verbatim testimony is required or if a file containing summaries of testimony and action taken is sufficient.

We feel this is best left to the States to determine what is appropriate. We expect the State's expedited process to conform to whatever constitutes "taking testimony and establishing a record" under other judicial or administrative systems of the State that make binding decisions.

Several commenters felt that we should specify strict standards for exemptions from expedited processes and that we should clarify the standards that will be used to measure "effectiveness and timeliness." We answer this comment under the heading "Exemption from Mandatory State Procedures (45 CFR 302.70(d))."

State Income Tax Refund Offset (45 CFR 303.102)

This regulation contains the criteria for implementing State income tax refund offset procedures.

Qualifications for Offset

One commenter requested clarification of how cases which have been terminated from AFDC and continue to receive IV-D services are treated for purposes of State income tax refund offset. A case which continues to receive IV-D services after being terminated from receipt of AFDC cannot be charged a fee for using the State income tax refund offset if the overdue support is referred for offset during the

period when IV-D services are automatically continued. Any offset amounts collected on behalf of these cases are considered collections on arrearages in accordance with § 303.102(g) and may be paid to the family or applied to reimburse the State for AFDC payments made to the family depending on a State's distribution scheme in non-AFDC cases. If the case is referred for State income tax refund offset after the family authorizes continued services as a non-AFDC case, the State must charge a fee to recover costs of submitting the case for offset (if it has opted to do so in non-AFDC cases) and distribute collections as above.

Accuracy of Amounts Referred for Offset

Several comments were received regarding verification and accuracy of amounts referred for offset. One commenter recommended that States be permitted to include increases as well as decreases of amounts referred for offset in their modification process. The regulation does not prohibit this, but we do not believe States should submit increases as part of the modification process and doubt that it would be permitted in most States under their own procedural due process requirements. Another commenter asked if the State could verify non-AFDC arrearage amounts using an affidavit from the custodial parent. The State may use any procedure to verify the accuracy of the referred amounts that is effective and accurate, including affidavits and information from other States.

In regard to information from other States, one commenter suggested we require the initiating State in interstate cases to verify the residence of the absent parent before requesting offset. Current regulations at § 303.7(c) require the initiating State to provide sufficient identifying information to the extent available to the responding State. However, we cannot require the initiating State to verify the address of the absent parent because specific address information may not be available when the case is referred to a responding jurisdiction. The responding jurisdiction is required to make efforts to locate the absent parent.

Notices

Several comments were received relating to notice requirements. Some of the comments requested clarification of the requirement to provide notice to the custodial parent of how amounts offset will be distributed. One commenter opposed notifying the custodial parent because of increased administrative costs and lack of statutory basis for such a requirement. Several other commenters suggested we require notice to the custodial parent only if the State chooses to reimburse itself for AFDC payments first. We believe notice to the non-AFDC custodial parent is necessary. However, we agree with the majority of commenters that it is only necessary if the offset amount is not paid to the custodial parent first. Final regulations require notice to the custodial parent only if the State chooses to apply amounts offset to unreimbursed AFDC payments before paying the family.

Another commenter recommended that State income tax refund offset notice requirements be the same as Federal income tax refund offset notice requirements. The Federal and State tax refund offset notice requirements are not the same because the statute includes more specific notice requirements with respect to the Federal income tax refund offset process and we have given the States flexibility to develop the specifics of their own State income tax offset program.

In reference to the advance notice to the absent parent, one commenter stated that the regulations should specify what is to be contained in the notice to the absent parent and mandate a 10-day response time. We have not been more specific in these regulations about notice requirements but have chosen to let the States determine the content of their notice in accordance with State laws and due process requirements and procedures.

Contesting Offset

One commenter requested that we provide specific standards for due process and not rely on State procedural due process requirements. Because many States consider child support orders to be final judgments, we have provided States with flexibility to develop a State income tax refund offset procedure which meets the requirements in this regulation and believe the requirement that States establish procedures which are in full compliance with the States' due process requirements is adequate. This requirement to follow the procedural due process requirements of the State is consistent with section 466(a)(3) of the Act, and recognizes the fact that some States which do not consider support orders to be final judgments may have to provide additional procedural safeguards.

Fee for Offset

Two commenters requested clarification regarding the optional fee States may charge in non-AFDC cases. One commenter asked if the offset fee can be charged in advance of the actual offset rather than be deducted from the offset amount. The final regulation clarifies that a fee to cover the cost of using the State income tax refund offset procedure may either be charged in advance or deducted from the amount offset. The other commenter asked if this optional fee can be charged in addition to the initial non-AFDC application fee. This fee may be charged in addition to the mandatory application fee because it is a fee for using this specific service. If the State elects to recover costs, it may also recover any costs in excess of the application fee and the fee for State tax refund offset services.

Distribution of Offset Amounts

We received a few comments regarding the distribution of offset amounts. One commenter asked us to define "reasonable period" for repaying excess offset amounts to the absent parent. The final regulations do not define "reasonable period" for repayment because it will not be the same for all States as a result of varying State offset programs. However, the regulations do specify "a reasonable period in accordance with State law" which we believe will protect the absent parent in this situation. We do not want to restrict State flexibility as long as excess amounts are repaid to the absent parent promptly in accordance with State law.

In response to a comment on timing of distribution, we are replacing the phrase "in a timely manner" with the phrase "within a reasonable time period in accordance with State law". This has been done to be consistent with any protections afforded the absent parent under State law.

We were also asked to clarify whether a State is required to change its current State income tax refund offset procedure prior to the October 1, 1985 effective date. This comment was in reference to current State procedures under which State tax refund offset amounts are distributed first as current support in accordance with existing distribution requirements. States may continue their present policy until the required effective date, after which amounts offset must be distributed as overdue support and may not be treated as current support collections.

Information to the IV-D Agency

Two comments concerned the transmittal of the absent parent's home address and social security number from

the State agency responsible for processing the offset to the State IV–D agency. One commenter recommended we delete the requirement to provide the State IV–D agency with the absent parent's social security number. Since this requirement is in the statute, we cannot delete it.

In response to the other comment, the final rule provides that the agency responsible for processing the offset must notify the State IV–D agency of the absent parent's home address and social security number or numbers. We agree with the commenter that it is inefficient for the State IV–D agency to have to request this information. The State IV–D agency will provide this information to any other State involved in enforcing the support order.

Paternity Establishment (45 CFR 302.70(a)(5))

A commenter felt that the proposed regulations gave insufficient attention to the requirement that States have in effect and have implemented laws and procedures for the establishment of paternity for any child at any time at least until the child's 18th birthday.

Current regulations at 45 CFR 302.31 and 302.33 require States to process paternity cases. The Child Support Enforcement Amendments of 1984 require States to allow paternity establishment at least up to the child's 18th birthday. Since it is clear that cases previously considered to be closed because of the child's age will now have to be reopened and services provided, we saw no need to elaborate on this requirement.

Other commenters requested that the regulations be amended to expressly provide that States have the option of permitting the establishment of paternity after the child's 18th birthday. These commenters quoted the House Report which states that "state paternity laws must permit the establishment of an individual's paternity for any child *at least* until the child's eighteenth birthday," and that "states could eliminate statutes of limitation in establishing paternity altogether if they wished." H.R. Rep. No. 527, 90th Cong., 1st Sess. 38. In response to these comments we have revised the regulations to require States to have in effect laws providing for the establishment of paternity of any child at least to the child's 18th birthday.

Imposition of Liens (45 CFR 303.103)

In accordance with the new statute, these regulations require States to have procedures for imposing liens against real and personal property for amounts of overdue support.

Several commenters asked that we require that State laws specifically provide for liens in child support cases to fully recognize the importance of the lien provision. State laws governing liens must contain authority to enable the State to meet the requirements and intent of section 466 of the Act. Therefore, if existing laws or administrative or court rules prevent a State from imposing liens in child support cases, the State must enact a law or amend the existing law or rules to comply with section 466 of the Act.

A few commenters asked that we implement more requirements for imposing liens, such as the amount of overdue support that should trigger imposition of a lien; the date on which liens must be imposed, e.g. 30 days after the amount of overdue support is determined or less; the time period for which liens may be applied towards property; and whether or not State laws should require the disposition of property at the end of a required time period.

To provide States with flexibility in this area, we did not regulate specific requirements for imposition of a lien. Many States have laws currently in effect that address some or all of the suggestions raised by the commenters. Other States may amend their current laws or enact new laws to require specific lien provisions such as a specified time period for disposition of property to satisfy a lien. In addition, the State's guidelines may include that a case may be inappropriate for imposition of a lien if the amount of overdue support is small.

Posting Security, Bonds or Guarantees (45 CFR 303.104)

The statute and regulations require States to enact laws requiring absent parents who have a pattern of overdue support to post a bond, or give security or some other guarantee of payment.

The majority commenters expressed concern that no bonding company will risk underwriting child support payments because of the long-term commitment of the support obligation and the high rate of noncompliance with these obligations. Since this provision is particularly valuable when the absent parent is self-employed or has other income not reachable through other means, we urge States and local IV–D agencies to educate local bonding companies of the efficacy of underwriting child support obligations in cases where the absent parent has been a minimal credit risk in other credit ventures.

We believe, however, that the security and guarantee portion of this provision may be easier to apply than the bond portion because an underwriter such as a bonding company would not be necessary. For example, dependent upon the State's procedures, the State IV–D agency or the court would require an absent parent who has a poor payment record to offer a negotiable instrument such as stocks, bonds, etc. which would be held in escrow by the IV–D agency or the court for payment of support should it become overdue.

Several commenters asked that we require States to establish an escrow account to ensure that the absent parent's assets are conserved for the dependent child. Other commenters asked that we regulate additional requirements for bonds such as the form in which the bond shall be posted, the period of time for which the bond shall remain in effect, and so on.

To provide States with flexibility in this area, we did not regulate specific requirements for posting security, bond or guarantee other than requirements to provide the absent parent with notice and procedures to contest. Some States may have laws that address some or all of the suggested specifications. Other States may amend their current laws or enact new laws to require specific bond, security or guarantee provisions. In addition, the State's guidelines for determining cases that are inappropriate for the bond procedures may include some specifications such as a minimum amount of overdue support for issuance of a bond.

Making Information Available to Consumer Reporting Agencies (45 CFR 303.105)

States are required by the statute and these regulations to provide information to Consumer Reporting Agencies (CRAs) upon their request on the amount of overdue support owed by an absent parent when that amount is in excess of $1000. The State may provide information to CRAs if the overdue support is less than $1000. The State may charge the CRA a fee and must provide the absent parent with notice of the proposed action and an opportunity to contest the accuracy of the information.

Many commenters felt that the CRA would not be interested in requesting information on the amount of overdue support owed by an absent parent from the State IV–D agency. Some of these commenters suggested that we require the State to provide this information to CRAs without having them request it. In addition, the commenter asked if the State would have to comply with the notice requirement in cases where the

State voluntarily forwards the information to the CRA.

The State may voluntarily forward information without request of the CRA regardless of the amount of overdue support. Even if the State provides information voluntarily to CRAs, the State must notify the absent parent and provide that individual with an opportunity to contest the action. To realize the full potential of this provision, we urge State and local IV-D agencies to work with CRAs to encourage their interest in this information, since such information may be an indicator of an absent parent's potential failure to meet other credit obligations. We also anticipate that the new mandatory State laws, especially wage withholding and liens, may have a significant impact upon the absent parents' ability to pay other debts and that CRAs will soon recognize this fact and want the information.

One commenter asked that we allow other State agencies such as the State tax offset office to handle the transfer of information to CRAs. The commenter felt that the State tax offset office would not only be aware of the amount of overdue support owed but would provide tighter confidentiality controls and better management than the State IV-D agency.

We do not feel it necessary to regulate which State office or agency provides absent parent information to CRAs. State IV-D agencies may enter into agreements with other State agencies to meet this requirement as long as the IV-D agency retains ultimate responsibility for meeting the requirements of the Act and these regulations.

One commenter asked if the IV-D agency can give additional information to the CRA such as whether or not the amount of overdue support has been reduced to a judgment, where the judgment is docketed and to whom it is owed. Since the first two examples relate to information on overdue support, the IV-D agency may provide this information to the CRA. However, the IV-D agency may not release the name of the person to whom the overdue support is owed since custodial parent information is confidential and subject to the safeguarding requirements at 45 CFR 303.21.

One commenter asked that we require States to publish a public notice in the local newspaper when absent parents cannot be located. The newspaper notice would give the absent parent's name and request that he or she call the IV-D agency at the number provided. The notification and procedures for contesting the proposed release of information to CRAs must be in compliance with the procedural due process requirements in the State. If the State allows for a newspaper notice, this is acceptable. However, if the notice results in the absent parent contacting the IV-D agency, the State must still send a formal notice of the proposed action to the individual and still must allow the individual an opportunity to contest the accuracy of the information.

One commenter felt that the notice requirement would increase the State's administrative costs thereby reducing the effectiveness of this method. Since the new law specifically requires States to notify absent parents of the proposed action and to provide an opportunity to contest the accuracy of the information, States must incur the costs of this requirement. However, we believe that the costs of this notice requirement will be offset by expected increases in collections since the new law requires States to implement a variety of remedies to ensure that support obligations are met and arrearages paid.

One commenter asked that we set up a national cooperative effort to establish consistent automated procedures between States and CRAs. We have worked directly with the Federal Trade Commission on several occasions to enlist the support of CRAs in child support enforcement matters. Our efforts have improved cooperation between our agencies and CRAs. Some automation has already occurred at the local level. We plan to continue to work for more results locally and believe this will be as effective as striving for a national cooperative effort.

One commenter asked us to require the use of CRAs to determine if the absent parent is covered by private medical insurance. Section 303.105 does not preclude a State from requesting and receiving information if it is available from CRAs on absent parents' private medical insurance coverage provided that a court or administrative support order is in effect for that parent. In fact, we encourage States to use CRAs to obtain information on absent parents for use in establishing or enforcing child and/or medical support orders.

Guidelines for Determining Inappropriate Use of Procedures (45 CFR 302.70(b))

Under section 466 and these regulations, States must offset State tax refunds, impose liens, require posting a security, bond or guarantee, or provide information to CRAs except when they determine that an individual case is inappropriate for use of any one or all of these procedures based on the guidelines developed by the State. The guidelines cannot be written in a way that excludes a majority of cases in which no other enforcement remedy is being used. In developing these guidelines, States must take into account the payment record of the absent parent, the availability of other remedies, and other relevant considerations.

Several commenters asked whether the States' guidelines for determining if a particular enforcement technique is inappropriate in a particular case eliminate judicial discretion. The guidelines eliminate caseworker discretion, but a judicial decisionmaker has discretion to order these remedies within the law.

Several commenters asked if the State has the option of developing guidelines on State tax offset, liens, bonds and for providing information to CRAs. We have clarified in the final regulations that the establishment of guidelines is mandatory. States must have guidelines for all four procedures, unless the State is granted an exemption from implementing one or more of the procedures based on the exemption criteria in 45 CFR 302.70(d). States must use the guidelines for determining which cases are inappropriate for use of a particular procedure.

An advocacy group asked that we require that the States' guidelines be made available to the public. We amended the regulations on each of the four procedures to provide that States' guidelines be available to the public.

Several commenters asked if we would clarify what is meant by requiring the States' guidelines to take into account the payment record of the obligated parent, the availability of other remedies and other relevant considerations. States must consider these factors for determining cases that are inappropriate for use of a particular procedure. We have clarified in the regulation that the guidelines may not be developed in a way that determines a majority of cases in which no other enforcement remedy is being used to be inappropriate. For example, if the absent parent has a poor payment record and is self-employed, the likelihood of using any one or all of these procedures increases. If the absent parent is a wage earner subject to withholding, requiring the posting of a bond or other security may be inappropriate.

Several commenters asked if only one of the four procedures may be used in an individual case. The State may use any one or any combination of the four procedures in an individual case. For example, if the absent parent owns property in the State and has an accumulated arrearage in excess of $1,000, the State may apply its lien

procedures in addition to forwarding the absent parent's name to the local CRA, provided that the absent parent has been notified of the action and given an opportunity to contest the accuracy of the information.

Delays in Implementation

Under the statute, if the Secretary determines that legislation is required to conform the State IV-D plan to one or all of the requirements of section 466 of the Act, the IV-D State plan will not be regarded as failing to comply with the requirements imposed by section 466 prior to the beginning of the fourth month beginning after the end of the first session of the State's legislature which ends on or after October 1, 1985.

A commenter requested that we require States to request approval for delay in implementation of one or more of the requirements of the statute prior to the October 1, 1985 effective date and limit the Secretary's approval to States where the legislature will not conduct an earlier session which could address the requirements of the new law.

States should have the necessary State legislation enacted by October 1, 1985.

Extending the effective date of the mandatory practices beyond that date should be based on unusual or uncontrollable circumstances. It would be unfortunate and a significant setback for State child support enforcement programs not to vigorously pursue the necessary legislation at the earliest possible time. State legislative action could help the States financially in the receipt of higher incentives under the new formula, also effective October 1, 1985. If, however, a State cannot by reason of State law comply with the requirements of section 466 of the Act by October 1, 1985, the State must indicate in its revised State plan submittal that legislation is necessary and include the State's legal basis for not implementing the mandatory practices.

Exemptions from Mandatory State Procedures (45 CFR 302.70(d))

Under the new law, if a State demonstrates to the satisfaction of the Secretary that any one or all of the laws and procedures specified under section 466 of the Act will not increase the effectiveness and efficiency of the State's child support enforcement program, the Secretary may exempt the State from the requirement(s). A State may also apply for an exemption from using expedited processes for a political subdivision of the State based on the effectiveness and timeliness of support order issuance and enforcement within the political subdivision and the general criteria for exemptions.

Several advocacy groups asked that the final regulation provide for public hearings or notice in the Federal Register before an exemption is granted. We encourage States to hold public hearings. In any case, States must demonstrate to the Secretary's satisfaction that an exemption is warranted. The exemption is subject to the Secretary's continuing review, is time limited and may be terminated if circumstances change. Exemptions are granted only if a State implements a procedure without a statute or if existing procedures are as efficient and effective as the required practice. Thus, the public will not be disadvantaged if a State receives an exemption.

A commenter asked if judicial challenges of the Secretary's decision are barred or if the bar pertains only to administrative appeals of the disapproval. The bar applies only to administrative appeals of the disapproval of a request for exemption since that is the only review within the Secretary's authority.

A commenter recommended that all requests for exemptions be submitted three months prior to the October 1, 1985 effective date of the mandatory practices so that the Secretary's approval or disapproval of these exemptions could be issued to States and political subdivisions by October 1, 1985. The commenter felt that if decisions were final as of October 1, 1985, States would proceed to amend their laws or enact new laws to provide for the mandatory practices during the first legislative session beginning on or after October 1, 1985. We agree with the commenter's recommendations and States should make every effort to submit initial requests for exemptions by June 30, 1985 to ensure full and timely consideration. The Department will respond by September 1, 1985 to State requests which are submitted by June 30. We want to stress, however, that if an initial request for an exemption is denied, a State must implement the mandatory procedure by October 1, 1985 or it will be found out of compliance with the State plan requirement in section 454(20) of the Act and 45 CFR 302.70, unless the State has been granted a delay from implementing the procedure based on the need for State legislation.

One commenter asked how long a State has to enact the law or establish and begin using the procedure if an exemption from enacting a law or using a mandatory procedure is revoked by the Secretary. If the State must enact a law governing the procedure, the State must come into compliance with the mandatory practice by the beginning of the fourth month after the end of the first regular, special, budget or other session of the State's legislature which ends after the date the exemption is revoked. If no State law is necessary, the State must establish and be using the procedure by the beginning of the fourth month after the date the exemption is revoked. We believe it is reasonable to use this time frame because Congress gave States the same time frame after enactment of Pub. L. 98-378 to enact laws and begin using the required practices.

Several commenters objected to the requirement that States must establish a "clear case" for an exemption. They felt this goes beyond the statutory requirement that a State demonstrate, to the satisfaction of the Secretary, that the enactment of a law or the use of a procedure will not increase the efficiency and effectiveness of the State's Child Support Enforcement program.

Our intent is using the phrase "clear case" was to ensure that the burden of proof is on the State to demonstrate that an exemption is warranted. We did not intend the use of "clear case" to be confused with commonly used legal definitions on the standard of proof. We have changed the final regulation to say that the State must "demonstrate to the satisfaction of the Secretary" (rather than "establish a clear case") that the program's effectiveness would not improve by using the procedure.

Some commenters asked if States will receive explicit guidance on the exemption process and the standards that will be used to measure "Timeliness and effectiveness." We intend to issue an action transmittal giving general guidance on the exemption process including standards which we will use to measure the timeliness and effectiveness of the State's current operations.

One commenter asked if a State may request an exemption from enacting a specific provision within a mandatory practice if a State currently uses the practice but does not meet all the requirements in the statute. Exemptions are available only for a complete practice. A State's request must demonstrate where the State conforms with Federal requirements and where it does not. Based on the total information provided, a State may receive an exemption to continue current practice, if the State has shown to the satisfaction of the Secretary that its current practice is as efficient and effective as the requirements in the statute.

A commenter asked whether the State could request an exemption from enacting a law requiring the use of expedited processes for establishing and enforcing support orders when the State currently negotiates consent agreements in 80 percent of its cases.

Obtaining consent agreements in a majority of cases only addresses half of the requirement to have expedited processes to establish and *enforce* support orders. Unless the State was also enforcing a large majority of its cases and could demonstrate that use of an expedited process would not increase the efficiency and effectiveness of the State's current efforts to establish and enforce all support orders, the State would be ineligible for an exemption.

Dates of Collection (45 CFR 302.51(a))

OCSE has received many comments on provisions in the proposed regulations requiring the collection date for distribution purposes in interstate cases to be the date the payment is received by the IV-D agency of the State in which the collection is made and in wage withholding cases the date the employer withholds the wages. This change was proposed because the regulation as it was written did not allow for accurate distribution when current support was collected but not received until a later date by the IV-D agency making the final distribution. For example: State A making collections for State B collects current support payments for June, July and August from an absent parent. These are current payments because the absent parent paid each payment on time. State B does not receive these three payments until November and must distribute the payments in accordance with the current regulation under which November is considered the date of collection. The IV-D agency of State B therefore must distribute an amount up to the monthly support obligation as current support for November and apply any excess over this amount to arrearages. Payments made by the absent parent in State A on time as current support have become arrearage payments in State B.

Many of the comments we received were from State IV-D agencies with automated systems for distribution of support collections. The IV-D agencies cited the high cost of reprogramming their systems to comply with the change. Some of them felt that the change could not be automated. They stated that these cases would have to be handled by a costly and time-consuming manual process which defeated the purpose of automation.

Commenters were also critical of the change because it would require complex, difficult and error prone, retroactive distribution. They cited examples such as a case where the family was not receiving AFDC in June, July, and August, but was receiving AFDC when the payments were received in November. These families would have their assistance lowered or terminated for one month, only to return to their original status in January. Also, a family that received food stamps in the three months would not have been entitled to them, if the payments had been received on time.

Some commenters stated that in many cases the responding State does not specify the period of time for which the payments were collected when sending the collections to the initiating State. The initiating State would have to contact the responding State causing needless delays. This same problem would occur in withholding cases and it would be very difficult to get employers to specify the date.

Another area of concern to commenters was the accounting difficulties that the change would create. They felt that IV-D agencies would have to create two or three sets of books to handle the accounting necessitated by this change. Auditors would not be able to audit the IV-D agencies correctly under these circumstances, they complained.

Other commenters raised various complaints about the change, such as it is not required by the new statute, would cause States to be unable to meet the IV-A reporting requirement under 45 CFR 302.32 and would provide no substantive benefit to custodial parents. One commenter was concerned that the problems which we cited as the reason for the change were caused by a small group of States not following the regulations for sending interstate collections to the initiating State within ten days. This commenter felt that the change in the regulations punished the majority of the States who follow the ten-day requirement for the transgressions of those few States who do not.

After consideration of all comments received we have deleted the proposed dates of collection in interstate cases and wage withholding situations and retained the definitions of date of collection as they appear in the current § 302.51(a).

Therefore, the date of collection is the date on which the payment is received by the IV-D agency or the legal entity of the State or political subdivision actually making the collection on behalf of the IV-D agency. For purposes of interstate collections, the date of collection is the date on which the payment is received by the IV-D agency of the State in which the family is receiving aid.

We have, however, included a requirement in § 302.51(a) that, in any case in which collections are received by an entity other than the agency responsible for final distribution, the entity must transmit the collection within 10 days of its receipt. Similar revisions have been made in § 303.100 with respect to employers transmitting collections and in § 303.52(f) with respect to responding States transmitting collections to initiating States. This requirement was proposed by the National Council of State Child Support Enforcement Administrators as an alternative to the proposed changes in dates of collection. We believe that this requirement will ensure timely transfer and accurate distribution of collections because responding States or jurisdictions and employers will be required to transmit collections expeditiously, thereby minimizing the total time elapsed between payment by the absent parent and final distribution of the collection. We intend to study the promptness of final distribution to the family, however, because we received numerous comments requesting that strict time frames be imposed to ensure that families receive support payments as quickly as possible. Based on the results of that study, we will consider proposing time frames for final distribution of support collections to families.

Collection of Past-Due Support From Federal Income Tax Refunds (45 CFR 303.72)

This regulation implements the new statute which expands the Federal income tax refund offset program to include past-due support in foster care maintenance and non-AFDC cases. This regulation provides States with criteria for implementing their Federal income tax refund offset programs on behalf of these additional cases.

Two commenters stated that the Internal Revenue Service (IRS) should draft regulations implementing the statutory provisions which amend the Internal Revenue Code. The IRS informed us that they plan to issue regulations which will address the changes to the Federal income tax refund offset program as a result of Pub. L. 98-378.

Definitions

The proposed regulations moved the definition of past-due support from § 303.72 to § 301.1 of the regulations. Some commenters requested we keep the definition of past-due support in § 303.72 or cross-reference the section that contains the definition. In response to these comments, we have added a cross-reference in § 303.72 to the section containing the definition of past-due support.

Support Qualifying for Offset

Several comments were received in reference to what support qualifies for Federal income tax refund offset. One commenter requested we be less restrictive in our offset criteria. Specific criteria regarding what support qualifies for Federal tax refund offset are included in the regulations because we believe the success of the program hinges on submitting cases only on the basis of accurate, verified information. The statute clearly requires that past-due support meet clearly defined criteria for offset to ensure that all individuals subject to the Federal income tax refund offset process are treated fairly and that the authority to offset Federal income tax refunds is not misused or abused.

Another commenter wanted to know how to treat cases which automatically continue to receive IV-D services after being terminated from AFDC. During the period immediately after termination from AFDC, no application fee or cost recovery from the support collection is permitted. Therefore, if a case is referred for Federal income tax refund offset during this time, no fee can be charged for submittal. When the IV-D agency is authorized to continue IV-D services after this period and then refers a case for Federal income tax refund offset, the State must charge a fee for submitting the referral if it charges a fee for Federal tax refund offset. In either situation, the law requires that amounts offset be treated as arrearages and be used first to repay any unreimbursed assistance received by the family.

Several commenters recommended we delete the requirement that reasonable efforts must have been made to collect support before referral of a case for Federal income tax refund offset. One commenter asked us to define reasonable efforts to collect in non-AFDC cases more clearly. In response to these comments we are deleting this provision. The requirement that reasonable efforts to collect had previously been made was not required by the statute and was intended solely to prevent tax refund offset from becoming the State's only enforcement remedy. We believe that the enforcement practices required under P.L. 98-378, particularly wage withholding, will ensure that States use other means to collect support on an on-going basis in addition to use of the Federal income tax refund offset. Therefore, despite this deletion, the IRS will not be the collector of first resort.

One commenter asked that we require States to certify any past-due support which has been reduced to a judgment in a non-AFDC case. The final rule allows States the flexibility to limit amounts offset in non-AFDC cases to past-due support which accrued since the case became a IV-D case, although we believe most States would choose to include amounts reduced to a judgment. This flexibility is provided for in the statute.

One commenter opposed the option to limit referral of non-AFDC past-due support to amounts accrued after the IV-D agency began to enforce the order. We do not agree. This provision ensures the accuracy of amounts certified for offset. In non-AFDC cases, there may not be an official public record of payment. The State cannot be required to certify amounts for offset it cannot verify. Therefore, final regulations permit States to limit non-AFDC referrals to amounts accrued after the IV-D agency began to enforce the order, in accordance with the statute.

Commenters expressed concern about the different threshold amounts for referral of AFDC and non-AFDC cases for offset. The minimum amounts that may be referred for offset are $150 in AFDC and foster care maintenance cases and $500 in non-AFDC cases. The $500 threshold is contained in statute and cannot be changed by regulation. The lower threshold for AFDC cases reflects the generally lower support obligations for AFDC familes and the fact that States are able to verify these arrearages easily because they are assigned to the State.We have not changed the $150 figure.

Several commenters objected to the provision prohibiting referral of spousal support and support due an individual who is no longer a minor in non-AFDC cases. This provision is in the statute and cannot be changed by regulation. For non-AFDC referrals the State must differentiate between spousal and child support and only submit amounts owed on behalf of a minor child as defined by State law. The statute and regulations do not allow non-AFDC referrals on behalf of an individual who is no longer a minor even if the arrearage accrued while the person was a minor child.

Many commenters objected to the requirement that there be a support order issued in the State submitting a non-AFDC case for offset. The commenters recommended we permit the State where the custodial parent applies for IV-D services to submit non-AFDC cases for offset. In response to comments, the final rule permits the State in which the custodial parent applies to refer a non-AFDC case for offset whether or not there is a support order issued in that State. If the absent parent contests the offset action, the absent parent may request an administrative review either in the submitting State or the State with the order upon which the referral for offset is based. This process is discussed further under "Complaint procedures."

One commenter asked if non-AFDC arrearages can be verified by requiring the custodial parent to attest to their accuracy. We do not specify in the regulations procedures for verifying arrearage amounts, but require States to have certain information in their records before submitting a case for Federal tax refund offset. This information includes a copy of the support order and any modifications upon which the amount submitted for offset is based; a copy of the payment record or, if there is no payment record, an affidavit signed by the custodial parent attesting to the accuracy of the amount of support owed; and, in non-AFDC cases, the custodial parent's current address. The State may use any verification procedures it deems to be effective, including affidavits from the custodial parent and information from other States. States should contact custodial parents in non-AFDC cases to verify their addresses and the amount of past-due support owed prior to submitting these cases. We also encourage States to provide custodial parents a written statement explaining the tax refund offset procedures and notifying these parents when they may expect to receive any refund which is intercepted and specifying that they will be obligated to repay the State in the event of over-payments or subsequent adjustments due to taxpayers' spouses filing amended returns. The State making the referral for offset is ultimately responsible for the accuracy of amounts referred and for refunding any erroneous or excess amounts offset and for reimbursing IRS for adjustments even if amounts offset have already been distributed to the custodial parent.

Notification to OCSE

One commenter opposed requiring States to submit AFDC and non-AFDC arrearages separately for offset. The

Internal Revenue Code requires the IRS to offset assigned support arrearages first (except for amounts owed for back taxes), then to make any other offsets allowed by law, and finally to offset for any past-due support owed to the family. Therefore, it is necessary to designate the arrearages as AFDC or non-AFDC for the IRS to prioritize the order of refund offsets.

Two commenters requested States be permitted to include increases as well as decreases in modifications of amounts referred for offset. The final regulations do not permit this because collections from offset may be applied only against the past-due support specified in the pre-offset notice to the absent parent. The notice of the amount of past-due support referred for offset must be issued before submittal of the case to the IRS.

Two commenters opposed OCSE issuing instructions for referral for offset without benefit of comment. They wanted program instructions to be in regulations and thereby subject to public comment. We do not include operational procedures and instructions in regulations because they are subject to variation and annual change. Program instructions do not add requirements outside of the regulations but merely describe mechanical procedures. For example, if the magnetic tape and data specifications that are part of the instructions were published in regulations, any changes would have to go through the regulatory process. This would be extremely burdensome and inefficient for both OCSE and the States.

Notices of Offset

Several comments were received on the advance notice to the absent parent and the notice to joint filers.

One commenter recommended the absent parent be given 10 days to object to the offset. We believe this time frame is too short to ensure that obligors have sufficient time to respond. Current program instructions require that pre-offset notices be mailed no later than October 31 and absent parents, generally, have at least 30 days to respond before their case is submitted for tax refund offset. Most respondents will contest the offset immediately upon receipt of the notice. Absent parents may also make any objections to the offset after the offset occurs, but we believe it is more efficient to encourage objections during the pre-offset period.

Several commenters believed that the post-offset notice to joint filers by the IRS is insufficient. One problem with providing advance notice to joint filers is that OCSE, or a State that issues the advance notice, has no way of knowing who will be a joint filer when the notice is sent. The IRS does not know who is a joint filer until it processes the tax return. Therefore, in our final regulation, under procedures for contesting, the State IV-D agency must refer the absent parent to the IRS if a complaint concerns a joint tax refund that has already been offset. If the joint tax refund has not yet been offset, the IV-D agency will inform the absent parent that the IRS will notify the absent parent's spouse at the time of offset regarding the steps to take to secure his or her proper share of the refund. The determination of the proper share of a refund will depend upon the property laws of the jurisdiction where the absent parent and spouse reside. Because of the structure of the offset process, we believe these procedures are the only procedures that assure that the offset procedure is effective and thereby accomplishes its purpose as intended by Congress.

One commenter suggested we require the same notices to individuals for Federal and State tax refund offset. The final rule does not have the same notice requirements for State and Federal income tax refund offset because procedures, distribution policy and the agency responsible for offset may be different for Federal and State income tax refund offset, depending on State practice. We would like to point out, however, that some States do use a combined notice, which is cost-effective, and we encourage other States to follow this lead.

Complaint Procedures

Several commenters stated that the complaint procedure in the proposed regulation is ambiguous and misleading. They recommended that this section be revised to clarify the use of the complaint procedure before the offset is made and after the offset occurs. The commenters recommended that this section be rewritten to clarify the timing of the procedure and what it will entail.

Other comments concerned the treatment of interstate cases when there is a complaint about the offset. Commenters objected to the proposed regulations concerning the treatment of interstate cases because they only apply to non-AFDC cases. The commenters recommended that we adopt the same procedural requirements for interstate AFDC cases that we have for non-AFDC cases. The commenter also objected to our statement in the preamble of the proposed regulation that there is a distinction between defenses available to absent parents depending upon whether the custodial parent is an AFDC recipient.

Another commenter requested that the final regulation clarify the complaint procedure in relation to the issues which can arise when more than two States are involved or there are different support orders from different States. Finally, one commenter asked that the complaint procedure for Federal Tax refund offset require the involvement of the custodial parent.

In response to these comments, the final regulation does not distinguish between AFDC and non-AFDC cases in the procedures for treating contested cases, except in one respect. A State is required to notify a custodial parent of the time and place of an administrative review only in non-AFDC cases. In AFDC cases, the State may wish to notify the custodial parent, but is not required to do so because the past-due support is owed to the State. The final regulations do specify notice requirements and provide an opportunity for administrative review, in intrastate and interstate cases. In intrastate situations, upon receipt of a complaint from an absent parent in response to the advance notice or concerning a tax refund which has already been offset, the IV-D agency must notify the absent parent and, in non-AFDC cases the custodial parent, of the time and place of the administrative review and conduct the review to determine the validity of the complaint. If the complaint concerns a joint tax refund that has not yet been offset, the IV-D agency must conduct an administrative review if there is a question concerning the validity of the arrearage, and must inform the absent parent that the IRS will notify the absent parent's spouse at the time of offset regarding the steps to take to secure his or her proper share of the refund. The IV-D agency must refer the absent parent to the IRS if the tax refund has already been offset and the taxpayer's spouse wishes to receive his or her share.

If the administrative review results in a deletion of, or decrease in, the amount referred for offset, the IV-D agency must notify OCSE. If there has already been an offset and it exceeds the amount of past-due support owed, the IV-D agency must take steps to refund the excess to the absent parent promptly, or in the case of a joint return where the unobligated spouse has not filed for and received a portion of the refund, the IV-D agency must take steps to refund the excess to the parties filing the joint return. 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 procedures for contesting offset in interstate cases permit the absent parent to request an administrative review in either the submitting State or the State with the order upon which the referral for offset is based. If the absent parent requests an administrative review in the submitting State, the IV-D agency of that State must proceed in the same manner as indicated above for intrastate cases.

If the complaint cannot be resolved by the submitting State and the absent parent requests a review in the State with the order upon which the referral for offset is based, the submitting State must notify the State with the order of the request and provide all necessary information listed in the regulation within 10 days of the date the absent parent requested an administrative review.

The State with the order must notify the absent parent and, in non-AFDC cases the custodial parent, of the time and place of the administrative review, conduct the review, and make a decision within 45 days of the receipt of notice and information from the submitting State.

If the administrative review is in response to the advance notice, the State with the order must notify OCSE if the review results in a deletion of, or decrease in, the amount referred for offset. OCSE will notify the submitting State of any modification or deletions that result from the administrative review conducted by the State with the order. If the review concerns an offset which has already taken place, the State with the order must notify the submitting State of its decision promptly. If an excess amount has been offset, the submitting State must take steps to refund the excess amount to the absent parent promptly upon receipt of the decision from the State with the order. The submitting State is bound by the decision made by the State with the order.

If the absent parent has an administrative review in the State with the order, collections made as a result of Federal tax refund offset will be treated as having been collected in full by both the submitting State and the State with the order for the purpose of computing incentives.

One commenter asked us to require States to include the county and the case number, if known, when they refer interstate cases. States should include sufficient information in interstate cases to enable a responding State to act on the case, as stated in our regulations on interstate cooperation which are found at 45 CFR 303.7. The final rule requires the submitting State to provide all necessary information to the State with the order, if the absent parent has requested an administrative review in that State. We believe this requirement responds to the commenter's concern.

Distribution of Offset Amounts

Several commenters suggested that, in non-AFDC cases, offset amounts be distributed to the family first. The statute amends the Internal Revenue Code to require the IRS to offset assigned past-due support first (except for amounts owed for back taxes). The regulations conform to the intent of Congress as indicated by the amendment to the Code.

Several commenters opposed the requirement that, in non-AFDC cases, the IV-D agency must inform the custodial parent in advance that amounts offset will be applied first to satisfy assigned arrearages which are referred for offset. The final regulation requires this notice because the custodial parent should be aware that offset collections may be not be paid to the family if the State has submitted assigned arrearages for offset and this information may be a factor in determining whether the individual desires IV-D services. Individuals should be made aware, however, that a referral for offset may also result in locating the absent parent and lead to a wage withholding which will ensure continued payment of support.

One commenter requested we clarify that a non-AFDC applicant may have assigned arrearages owed to the State which would be satisfied first with any offset amounts. We believe the regulations at § 303.72(h)(3) are clear on this point as discussed above.

One commenter recommended that the State IV-D agency refund excess offset amounts to the taxpayer within three days of receipt. Procedures and levels of automation vary greatly among States. Consequently, all States do not have the capability to refund excess amounts to the taxpayer within three days. The current regulatory language requires States to refund excess amounts within a reasonable period in accordance with State law. We believe this language provides States with the necessary flexibility to administer their IV-D programs as efficiently as possible while protecting the right of the absent parent to the funds.

One commenter requested that we address in regulations the treatment of offset amounts when the person who is due the money cannot be located. Instructions are currently being developed on this issue and are expected to be disseminated via the action transmittal covering the 1985 processing year.

One commenter opposed limiting the application of amounts offset to the amount specified in the notice to the absent parent. This is required in the final regulations because otherwise the absent parent would not receive notice of the claim for any subsequently accrued arrearages or have an opportunity to contest the offset. If the offset amount exceeds the past-due support amount specified in the advance notice, the excess must be refunded to the absent parent. 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.

One commenter requested that we define "reasonable period" as it applies to the refund of excess offset amounts. The final regulations define reasonable period relative to State law because the time frame for refunding excess offset amounts depends on how a State administers its program. We encourage States to make refunds as quickly as possible and have specified in instructions that the State or local jurisdiction cannot delay a refund merely because it has not yet received the offset amount.

Several commenters pointed out that the six-month delay for distributing amounts offset from joint returns is not very helpful since taxpayers have three years to file an amended return. We realize that in many instances this will not prevent later adjustments. However, the statute limits this delay and therefore it is included in the final regulations.

State and Local Debts Resulting From Erroneous Payments

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 uncollectable accounts and other claims and related costs." However, funding is available for administrative costs of

recovering or attempting to recover these amounts.

One commenter requested that local jurisdictions should be held harmless for any offset amounts distributed and later adjusted by the IRS if these amounts cannot be recovered. We believe that State and local jurisdictions should determine how local debts resulting from unrecovered adjusted amounts should be treated. As stated above, Federal funding is not available to repay these debts.

Several commenters proposed policies for handling State debts incurred from unrecovered adjustment amounts. One commenter suggested States be permitted to use the offset process to recover such amounts. This is not permitted because adjustments by the IRS which result in erroneous State payments are not child support and therefore do not meet the definition of past-due support qualifying for offset. Another commenter suggested States be allowed to set up interest-bearing accounts using offset amounts in joint refund cases which can be held for 6 months and fees collected in non-AFDC cases to cover amounts adjusted by the IRS. The commenter suggested that States not be required to treat interest earned by these accounts as program income. The State is required under 45 CFR 304.50 to treat all fees and interest as program income that reduces the State's expenditures claimed under the program. However, we encourage States to establish funds to cover amounts adjusted by the IRS as long as fees and interest are counted as program income.

Several commenters suggested the IRS limit the time frame for requesting a joint return adjustment in order to avoid later adjustments which may result in State and local debts. The Internal Revenue Code allows a taxpayer three years to file an amended return. The IRS must conform to the statutory provisions of the Internal Revenue Code.

Several commenters requested clarification regarding whether an individual can apply for Federal tax refund offset services only and, if so, whether the State may charge both an application fee and a fee for submitting the case for offset. An individual must apply for IV-D services and may not apply for Federal tax refund offset services only. The State must charge an application fee when an individual applies for IV-D services, effective October 1, 1985. If the State chooses to charge a fee for Federal tax refund offset services rendered to non-AFDC recipients of IV-D services, this fee must be charged in addition to the application fee. The State is responsible for determining which services are provided to an individual who applies for IV-D services, but may take the applicant's request for a specific service into consideration.

Another commenter asked if the fee can be kept if no offset is made. The fee may be kept in this case.

Financial Provisions—Incentive Payments (45 CFR 302.55 and 303.52)

The new law replaces the current 12 percent fixed incentive system which rewards States for collections made in AFDC cases with a new system whereby States will receive incentives based on collections made in AFDC, foster care maintenance and non-AFDC cases. Under the new system, States will receive a minimum incentive payment with respect to AFDC (including foster care) and non-AFDC collections. In addition, States are eligible to receive additional amounts above the minimum payment if their performance exceeds the criteria established in this regulation. The new system also requires States to pass through an appropriate share of their incentive payments to localities in the State that participate in the costs of the program. States are to develop methodologies to determine the appropriate share due participating localities. To ensure that States develop fair and equitable methodologies, we require States to seek local participation in the development of their methodologies.

Definitions

Two commenters asked that we expand the definitions of "AFDC collections" and "non-AFDC collections." One asked that the "AFDC collections" definition include the $50 payment to the family under section 2640(b) of the Deficit Reduction Act of 1984. The other asked that the "non-AFDC collections" definition include payments of support through the IV-D agency or other entity upon request of a parent under 45 CFR 302.57.

For FY 1986 and beyond, we will calculate the State's AFDC portion of its total incentive payment based upon *gross* collections which were made on behalf of the individuals specified under the "AFDC collections" definition and which have been distributed during the specified fiscal year. Gross collections include the $50 payments to families. Therefore, we believe it is unnecessary to mention the $50 payments under this definition, since these payments refer to the manner in which only one part of the gross collection will be distributed. Incentives will be paid on the $50 payments beginning in FY 1985 under the current incentive system and beginning in FY 1986 under the new incentive payment system.

In addition, it would be incorrect to include payments made under § 302.57 in the definition of "non-AFDC collections" since these payments are not IV-D collections. Congress intended States to provide this service to non-IV-D individuals upon their request for a minimal fee and at no cost to taxpayers.

Computation of Incentive Payments

In calculating the incentive payment due a State, one commenter stated that it is illegal under the Debt Collection Act to exclude fees, recovered costs, and program income such as interest earned on collections from total IV-D administrative costs.

The Debt Collection Act at 42 U.S.C. 4213 refers to interest States may earn on amounts received from the Federal government for grant-in-aid programs. In effect, States are not held accountable for interest earned on these amounts pending their disbursement for program purposes. Section 455 of the Act and implementing regulations at 45 CFR 304.50 require the Secretary, in determining the total amount expended by a State during a quarter, to deduct from gross expenditures the total amount of any fees collected or other income resulting from services provided for both AFDC and non-AFDC cases under the title IV-D State plan. The provisions of the Debt Collection Act do not apply to fees, recovered costs or other program income such as interest since these amounts are not grant-in-aid funds.

Many commenters asked if systems expenditures eligible for 90 percent Federal funding and interstate grants expenditures can be excluded from the collections-to-expenditures ratio when calculating incentives. These expenditures may not be excluded. Section 455(e) of the Act explicitly requires that State expenditures in carrying out an interstate grant must be considered in calculating incentive payments under section 458 of the Act. Since the revised section 458(c) of the Act does not authorize the exclusion of expenditures which qualify for 90 percent funding, they must be included in the State's expenditures when calculating incentives.

Several commenters asked if States can receive 70 percent Federal funding of laboratory costs in determining paternity when these costs are excluded from total IV-D administrative costs for purposes of calculating the State's incentive payment. Other commenters asked that we expand laboratory costs in determining paternity to include the

costs of obtaining and transporting samples to the laboratory. In response to the first question. States are eligible to receive 70 percent Federal funding for laboratory costs in determining paternity even though these costs may be excluded from the State's total administrative costs in calculating the incentive payment. With respect to the second question, Federal funding is available for the costs of obtaining and transporting samples to the laboratory.

One commenter suggested that we allow States to receive an additional incentive for collection of non-AFDC arrearages under the new incentive structure. This commenter felt that, unless attention was given to non-AFDC arrearages, States would concentrate only on collections of current support.

The new law does not provide specific incentives for collections of non-AFDC arrearages. However, it does provide incentives based on total distributed collections which include any collections representing payment on arrearages. We believe that many of the provisions of the new law, such as income withholding and State tax refund offset, will increase collections, including collections representing payments of arrearages.

One commenter asked how OCSE will calculate the total incentive payment due a State in a specified fiscal year and the method by which States will receive their incentive payment.

As is currently done, States will submit quarterly estimated collections and expenditure data to OCSE. OCSE will review and analyze the State's data and determine the estimate of collections and expenditures. OCSE will calculate the State's estimated annual AFDC and non-AFDC incentive payments using the table specifed in the regulations and notify the State and the Office of Family Assistance (OFA), HHS, of the total estimated amount of incentive due the State for the upcoming fiscal year. At the beginning of that fiscal year, the State will deduct one-quarter of its total estimated incentive payment from the Federal share of collections before reimbursing the Federal government for its contribution toward AFDC assistance payments. The State will repeat this process for the remaining three-quarters of the fiscal year until it receives the total estimated incentive payment. (Quarterly adjustment to the Federal share of collections is the method by which states currently receive the 12 percent ned incentive for AFDC collections.) At the end of the year, the estimated centive amount will be adjusted to flect the State's actual collections and penditures. However, adjustments to the State's estimated incentive payment will be postponed until reliable data are available, if the Office determines that the State's actual collections and expenditure data are unreliable.

One commenter suggested that we make quarterly adjustments to the State's incentive payment so that the State can receive its earned incentive payment in full on an on-going basis. We will determine the annual incentive payment due a State based on the State's estimated performance for the upcoming fiscal year. Quarterly adjustments to the State's incentive payment would be inaccurate because the full extent of the State's performance for the specified fiscal year will not be known until the State submits its actual performance data for the last quarter of that year. Therefore, after the State submits its actual performance data for the four quarters, the State's AFDC grant award will be adjusted for any over or underpayments made for incentives. Adjustments may be postponed, however, if the Office determines that the State's data are unreliable.

Many commenters asked how incentives will be paid on the $50 payment to the family (under section 2640(b) of the Deficit Reduction Act of 1984) after FY 1985. One other commenter asked that we allow the entire $50 payment to be deducted from the Federal share of collections.

For FY 1986 and beyond, the new law provides that States will receive incentives based on *gross* collections. Therefore, all payments to the family in AFDC cases including the $50 payment, amounts collected that satisfy unreimbursed assistance payments and any amounts collected which represent past payments or future payments are eligible for incentives. The distribution sequence set out in the statute and regulations precludes deducting the entire $50 payment from the Federal share of collections because only amounts in excess of the $50 payment will be used to reimburse the State and Federal government for their share in the financing of assistance payments.

Pass-Through of Incentives to Localities

One commenter asked how participating localities will return overpayments of incentives to the State.

We will pay incentives to States based on the State's estimated performance for the upcoming fiscal year. After the end of a fiscal year, we will notify OFA of any adjustments to a State's grant award based on the State's actual performance. We expect States will adjust local incentive payments for any under or overpayments at the same time. However, States have the flexibility to adjust local incentive payments on an annual, quarterly, or other basis if they so choose.

One commenter asked that we require States to extend the "hold harmless" provision for FY 1986 and 1987 to localities. There is no authority in the statute to require this. However, States may opt to extend the "hold harmless" provision to localities.

Several commenters felt that States have too much discretion in determining the standard methodology by which to pass through incentives to participating localities and asked that OCSE determine the methodology. The new law specifically requires a State to determine the appropriate share of it incentive payment to be passed through to those localities in the State that financially participate in the program. Therefore, we have no authority to determine the methodology that States may use to meet this requirement.

One commenter recommended that we replace the term "appropriate share" with "earned share" so that localities that are cost effective will receive their fair share of incentives in relation to localities that are not cost effective. The new section 454(22) of the Act requires States to pass through an "appropriate share" of their incentive payment to financially participating localities, taking into account the efficiency and effectiveness of these local programs. Because the term "appropriate share" is statutorily based, we have not replaced it with "earned share."

One commenter asked that we explain our recommendation that a State's standard methodology also provide for payment of incentives to localities that administer the program, but do not participate in its costs. The new law requires States to pay incentives to localities that participate in the costs of the IV-D program. However, many States have localities that do not participate in program costs but which operate an efficient and effective enforcement program. Therefore, we recommend that States pay incentives to these localities to ensure their continued level of performance. If the State elects to reward these localities, however, it would not have to do so at the same level as it rewards localities that participate in program costs.

Several commenters asked that we delete the provision that requires a State to seek local participation in the development of its standard methodology since this provision has no statutory basis. We met with representatives from various States and localities to discuss the impact of the

new incentive statute on the program at both the State and local level. Localities that currently depend on the 12 percent incentive to finance their programs expressed great concern with the new structure, especially the fact that the States have authority to determine the "appropriate share". Therefore, to ensure that States' standard methodologies are fair to localities, we used the Secretary's authority under section 1102 of the Act to require States to seek local participation in the development of their methodologies. We believe this to be soundly based, since an effective program requires cooperation between the State and the localities that operate the program.

With respect to interstate cases, a commenter stated that case information is not adequate to allow responding States to identify initially whether the case is a non-AFDC or AFDC case. Several other commenters stated that responding States often are unaware of the changes in case status, i.e. whether the case continues to be an AFDC or non-AFDC case. Commenters said that lack of information in both situations will cause problems in computing incentives since both States in interstate cases receive credit for AFDC and non-AFDC collections.

In response to these concerns, we added a provision at § 303.52(e) to require initiating States to identify cases initially as either a non-AFDC or AFDC case. In addition, the provision also requires initiating States to notify the responding State of each change in case status. Furthermore, under the new incentive system, if a State is to receive full credit for its AFDC and non-AFDC interstate collections, the State must be able to correctly identify cases in its existing interstate case load as either AFDC, non-AFDC on IV-E foster care maintenance cases.

Several commenters objected to the provision which requires a State or a political subdivision that makes a collection in an interstate case to transmit that collection to the originating State no later than 10 days after the end of the month in which the collection was made. This time frame has been in current regulations at § 303.52(d)(2) since the inception of the IV-D program. As discussed earlier, in response to comments on the proposed changes in the date of collection in interstate cases, we are retaining the definition of date of collection contained in current regulations. However, in order to ensure accurate and timely distribution by the initiating State, we are requiring the responding State in interstate cases to transmit the collection to the location specified by the initiating State no later than 10 days from its receipt.

Reduction in Federal Matching Rate (45 CFR 304.20, 305.22)

Several commenters objected to the decreases in Federal funding starting in FY 1988. One of the commenters suggested that the required practices would not be implemented efficiently because of the reduced Federal funding levels.

Since the new law reduces the Federal reimbursement of administrative expenditures to 68 percent in FY 1988 and 1989 and 66 percent in FY 1990 and thereafter, we cannot change this provision. Reduction in the matching rate does not, however, result in a reduction of overall program funding, because increased incentive funds are available to States based on performance. Incentive payments are available to States on a gradually increasing basis as administrative matching declines.

Therefore, decreases in the Federal matching of administrative expenditures may be offset by increases in the State's incentive payment, if the State does well collecting support in both AFDC and non-AFDC cases. Moreover, we expect major increases in collections as well as operational efficiencies particularly over time as a result of implementing the required practices.

Expansion of 90 Percent Funding for Systems (45 CFR Part 307)

The statute and regulations explicitly authorize 90 percent funding for automated systems to include monitoring of support payments, maintaining accurate records regarding support payments and notifying officials about arrearages that occur. The 90 percent funding is also extended to the acquisition of computer hardware.

One commenter asked if Federal law and regulations could be revised to permit States to develop software programs for Computerized Support Enforcement Systems (CSES) that perform the basic functions needed in each case and interface with the databases of the Federal PLS and IRS to access and pool data pertinent to child support enforcement.

States make requests to the Federal PLS for locate information regarding absent parents (e.g., address of the absent parent). The Federal PLS obtains information from the records of other Federal agencies and transmits the information to the requesting State. Since the Federal PLS does not retain any of the information it receives, there is no database for interface.

The Internal Revenue Code (26 U.S.C. 6103(1)(6)) places strict limitations on the disclosure of information maintained by the IRS. Although the IRS is authorized to provide certain information to State and local IV-D agencies, the States are prohibited from using this information for purposes other than the collection of child support. We believe that the pooling of IRS and other information, as suggested by the commenter, would make it difficult for the States to safeguard the IRS information. The IRS does not permit State IV-D agencies direct access to its database. Although direct access to the IRS database would enable States to obtain information in a more timely manner, we believe that the IRS disclosure procedures are reasonable and necessary.

One commenter suggested that, within the limits of the statute, we consider making high performing, large, local jurisdictions eligible to receive 90 percent Federal funding for systems development when the State determines that the proposed systems effort is consistent with State objectives.

Section 455 of the Act and the implementing regulations at 45 CFR Part 307 make Federal funding available at the 90 percent rate for the development of statewide CSESs that meet certain requirements. Ninety percent Federal funding is not available for the development of local systems. However, the States have flexibility regarding the design and implementation of a statewide CSES system. A State could implement a statewide CSES in phases, bringing in large, high performing jurisdictions prior to covering the remaining jurisdictions in the State.

Remaining Provisions—Collection and Distribution of Support in Foster Care Maintenance Cases (45 CFR 302.31, 302.52)

The statute requires States to take all steps, where appropriate, to secure an assignment of support rights on behalf of a child receiving foster care maintenance payments under title IV-E of the Act and requires IV-D agencies to collect and distribute child support for IV-E foster care maintenance cases. The regulations require that amounts paid on required support obligations in IV-E foster care maintenance cases must be retained by the State to reimburse it for foster care maintenance payments. The IV-D agency is required to determine the Federal share of collections so that the State can reimburse the Federal government to the extent of its participation in financing the foster care maintenance payment. The regulations

require that, if the amount collected is in excess of the monthly foster care maintenance payment but not the monthly support obligation, the State must pay the excess to the State agency responsible for supervising the child's placement and care. This agency must then use the money in the child's best interests. States should be aware that in setting aside monies for future support under § 302.52(b)(2)(i) that the State's resource limit may be exceeded, thereby resulting in ineligibility for the child. Any amount which exceeds the monthly support obligation must be retained by the State to reimburse itself for past unreimbursed foster care maintenance or unreimbursed AFDC assistance payments.

We received comments on the requirements for collection and distribution of support in foster care maintenance cases which expressed concern that the Federal title IV-E program must give States some guidance on issues that arise in IV-E foster care maintenance cases. They felt that issues such as the procedures for taking assignment, which cases require an assignment to be taken, the penalties for noncooperation, and so on are of great concern to States and were not addressed in the proposed regulations.

Because OCSE is not charged with implementing the assignment provisions under the new section 471(a)(17) of the Act, we cannot give guidance in these regulations. The Department's Administration for Children, Youth and Families plans to issue instructions to guide States in implementing the new section 471(a)(17) of the Act. For further information, please contact Paula Brown at (202) 755-7447.

Other commenters expressed concerns about the provision requiring that monies collected which exceed the IV-E foster care maintenance payment but not the monthly support order must be paid to the State agency responsible for supervising the child's placement and care. One of these commenters felt that, since the support order often is made on the basis of State law and names for former spouse as the payee, State law prohibited the excess being paid to anyone else.

Once an assignment of support is taken by the State in a title IV-E foster care maintenance case, the distribution of collections made under the assignment is guided by section 457 of the Act. We do not believe States would be prohibited from implementing this provision.

The proposed regulations allowed States the option to provide support enforcement services to former IV-E foster care maintenance cases for up to five months after title IV-E eligibility ends. Several commenters felt OCSE had no statutory authority to offer States this option. Another commenter was concerned that the provision requiring States to give priority to current support under this option puts the IV-D agency in a conflicting position because of the requirement that the agency attempt to collect assigned support which has not been reimbursed. Under section 457(c) of the Act, States are required to continue to provide IV-D services to families that lose AFDC eligibility. There is no parallel provision authorizing continued services to a child who loses title IV-E eligibility. Since Congress did not include this provision we have decided to eliminate it in response to these comments and in light of the fact that IV-E foster care maintenance children often return to families receiving AFDC who will continue to receive IV-D services anyway. In cases where the family is not receiving AFDC, the custodial parent would have to apply for IV-D services and pay the mandatory application fee to have IV-D services continued.

Other commenters suggested that we waive the application fee for IV-D services for State-funded foster care cases. We do not have the statutory authority to waive the fee in State-funded foster care cases, or in any other cases. The statute explicity requires an application and an application fee in all non-AFDC cases. These commenters also suggested that we require that an annual notice of collections be sent in IV-E foster care maintenance cases. We have not required such a notice since the statute does not require it, but urge States to consider providing a notice in these cases as in AFDC cases.

Two States commented that their IV-E foster care maintenance program distributes foster care collections now and requested that the regulations be changed to allow them to continue this method. Since the IV-D agency can contract with other agencies to distribute collections as long as it maintains ultimate responsibility for proper distribution, systems such as those mentioned above would be acceptable under the regulation.

Lastly, a commenter wanted us to clarify distribution when a child receiving title IV-E assistance is part of an AFDC family and when the child leaves the IV-E foster care maintenance program and returns to the AFDC program. In IV-E foster care maintenance cases in which the child's family is receiving AFDC payments, support collections must be allocated for distribution purposes between the title IV-A and title IV-E program based on the number of children receiving each type of assistance. When the child returns to the AFDC family, the regulations at § 302.51 regarding distribution of collections are applicable.

Publicizing the Availability of Support Enforcement Services (45 CFR 302.30)

A majority of the comments we received on the provision for publicizing the availability of support enforcement services suggested that we require States to establish a toll free number for disseminating information concerning available child support enforcement services.

We are not requiring that States establish a toll free number but encourage States to do so, because this is one way of disseminating information. We encourage this and any other effective way to disseminate information about IV-D services.

A number of commenters made various suggestions as to other requirements OCSE should include in the regulations, such as requiring States to use newspapers to publicize absent parents' names if they do not pay support owed and requiring that the public service announcements not be aired during early morning hours. We feel these are all areas of State option and as such we are not requiring such activities.

Several commenters suggested that OCSE fund studies to determine whether joint custody and visitation enforcement produce better compliance with support orders and whether there is a correlation between child abuse and nonpayment of child support. A study funded by OCSE is currently under way on the effects of child custody arrangements on child support payments by absent parents. In addition, the Child Abuse Amendments of 1984 require the Secretary of HHS to study the correlation between a parent's failure to pay child support and the incidence of child abuse and to submit findings and recommendations in this area to Congress within two years. We are supplying these comments to the Office of Human Development Services in HHS for their consideration in implementing those requirements.

Commenters also requested that we define the words "regularly and frequently" in the regulations with respect to publicizing services. The commenters asked who would determine what volumes and rates would meet the requirements in the regulations. We do not wish to constrain publicizing of services by defining these terms to specify the minimum effort

required. Acceptable levels of publicity will depend upon many factors and we believe that the terms "regularly and frequently" provide sufficient guidance to States and to us for determining whether the requirement has been met.

Mandatory Collection of Spousal Support (45 CFR 302.17 and 302.31(a)(2))

We received two comments on the requirements to collect spousal support in IV-D cases where a support order has been established and the child and spouse area living in the same household. One commenter asked if the State must collect spousal support if the child and spousal support obligations are in separate orders. States must do so as long as all other conditions for collecting spousal support are met. The other commenter asked if a custodial parent has two ex-spouses and a child by one of them, must a State collect spousal support from the ex-spouse who is not the parent of the child? Collection of spousal support is only permitted when the obligee is living with the child receiving support enforcement services.

Accessing the Federal Parent Locator Service (PLS) (45 CFR 302.35)

The revised statute and these regulations increase the availability of the Federal PLS to State agencies by deleting the requirement that States exhaust their own State resources first before submitting a request to the Federal PLS.

We received two comments on this provision. One commenter recommended that private attorneys be permittted access to the Federal PLS. These regulations amend the availability of the Federal PLS to State agencies, but make no changes to the definition of who is authorized to obtain information from the Federal PLS. The definition of "authorized person" is found at section 453(c) of the Act and includes the circumstances under which private attorneys may request information from the Federal PLS. Authorized persons include attorneys who have the duty or who are authorized under the IV-D State plan to seek to recover child and spousal support as well as attorneys of children who are requesting information on an absent parent who has a duty to support and maintain the child. However, all requests to use the Federal PLS must be submitted to the State PLS or other IV-D offices designated by the State.

The other commenter requested that the Federal PLS respond to inquiries within three weeks of the request. The final regulation does not mandate time frames for responding to Federal PLS inquiries. The Federal PLS sends requests to other agencies and the response time to inquiries depends on the processing times of those agencies. On the average, the response time is three weeks from the date of initial request.

Continuing IV-D Services for Families That Lose AFDC Eligibility (45 CFR 302.51(e))

This regulation requires States to continue to provide IV-D services for a period of up to five months after an AFDC family ceases to receive AFDC payments. The State is not permitted to require a formal application, recover costs from the support collection, or charge an application fee in these cases. If the State is authorized to continue to provide IV-D services after the five-month period, the State may recover costs, but cannot charge an application fee or require a formal application.

Several commenters asked if a family can choose not to have IV-D services continued during the mandatory service period immediately after termination of AFDC. If an individual does not wish to continue receiving IV-D services, the State IV-D agency cannot force the individual to continue as a IV-D case. However, if a State ceases to provide IV-D services during this period under such circumstances, it should indicate in the case record that IV-D services were terminated at the individual's request.

Several other commenters asked if this provision applies to all AFDC recipients who are terminated from assistance or only those for whom the IV-D agency is collecting and distributing support. We have interpreted this provision to apply to all AFDC recipients, based on Conference Report No. 98-925. This report indicates that Congress intended all individuals who are terminated from AFDC to continue to receive services.

Many commenters asked that we clarify whether States must provide all applicable services to these continued cases or just collection services. We have interpreted this provision based on Conference Report No. 98-925 to require the State IV-D agency to provide all necessary services to these cases. The State IV-D agency determines which services are appropriate and may consider an individual's wishes in doing so.

Two commenters recommended we require States to notify the individual of the action needed to authorize continuation of IV-D services, as well as the time period for taking action. The commenters did not want the family to be required to accept services they do not want. One commenter suggested we require the State to notify the family of its distribution policy when it is authorized to continue services after the period of automatic continuation of services. We have revised the regulations to require States to notify the custodial parent before the end of the mandatory period of continued services about the consequences of continuing to receive IV-D services. The notice must specify the services available for use at the agency's discretion, as well as the State's fees, cost recovery and distribution policies. This notice will provide the custodial parent with adequate information to determine if he or she wants to refuse further IV-D services.

Many commenters asked that we define "authorization" or explain how it differs from an application. The specific procedures for authorizing continued IV-D services may vary from State to State. However, the State must send the notice discussed above to the family and may state that failure to request the IV-D agency to discontinue services will constitute authorization. The State may not notify the family during the five-month period that services will be discontinued unless the IV-D agency is notified to continue services. This is consistent with Congressional intent that continuation of services should be the norm unless the family does not want IV-D services.

Several commenters requested that distribution for cases which continue to receive IV-D services during the five-month period be clarified. During the required service period after termination from AFDC, amounts collected for support must be applied first to the current support obligation and any arrearages accruing during the required service period. These amounts are paid to the family. Payments in excess of these amounts are used to pay the State for unreimbursed AFDC payments. If the State is authorized to continue IV-D services after the mandatory service period, the State may apply arrearages collected either to the family first or to unreimbursed AFDC payments first, depending upon how the State distributes collections of arrearages in non-AFDC cases.

One commenter asked if the State may collect both assigned and unassigned arrearages during the mandatory service period. The State may collect assigned and unassigned support during the mandatory service period. Any collection must be distributed first as current support, which is unassigned.

One commenter asked if a State could "offer" services during the mandatory service period instead of automatically

providing them. The State must provide any appropriate IV-D services to an individual during this period unless the individual expressly requests that no services be provided. The State may not merely "offer" services if this means that providing appropriate IV-D services is contingent on the custodial parent responding positively before the services are provided. The intent of this provision is to continue services to former AFDC recipients without any change in procedures or break in services already being provided. The IV-D agency must determine which services are appropriate and must provided them during the mandatory service period.

Several commenters have indicated that the five months referred to in the proposed regulations is different from the current regulation and statute. These regulations do not change the time period currently in regulations. "Three months from the month following the month" after AFDC ceases equals a total of five months. We used the term five months because it was a more direct way of stating the time frame. However, to eliminate any confusion, we have deleted the term "five-month period."

One commenter asked if States could pass through checks from the absent parent or if they could issue their own checks to the family. The State has discretion to determine whether they pass through checks or issue their own.

Another commenter stated that States will have difficulty identifying cases going from the mandatory service category to the authorized service category. This identification is necessary for purposes of determining whether the State may recover costs. We suggest that the State may want to use the same procedures for identifying these changes in case status as they use currently for identifying changes in status from AFDC to non-AFDC and vice versa.

Notice of Collection of Assigned Support (45 CFR 302.54)

Both the statute and the regulation require that a State provide an annual notice of the amount of support collected during the past year to individuals who have assigned rights to support under § 232.11. The notice must be sent to current AFDC recipients and to former recipients for whom an assignment is still effective. Two of the commenters felt the requirements in the regulation were too general. They argued that AFDC recipients would not receive sufficient information about the amounts and regularity of payments if there was no breakdown of monthly collections in the notice. They also wanted the notice to specify the total amount of support owed including arrearages, the total amount of support paid including arrearages, to whom these arrearages were distributed and the dates on which all payments were made. We are not requiring a monthly breakdown of collections, but States may provide a more complete breakdown if they wish. They could, for example, provide more detailed information to AFDC recipients who request it.

Other commenters requested that we require States to send a notice of collections to absent parents if requested. Many States already provide such information to absent parents upon their request, so we have not changed the regulations.

We received comments from two persons who thought the notice requirement should be eliminated as it created an administrative burden on States and added unnecessary costs to the program. This notice is required by the statute at section 454(5) of the Act.

Another commenter argued that the notice should be sent only upon the request of the receipient. The statute requires the notice to be sent annually in all AFDC or former AFDC cases under assignment.

We also received comments seeking clarification of the notice provision. These commenters asked if States must use the Federal fiscal year or any other one-year period for determining the annual support collected. These commenters also asked if the State must provide the first notice by October 1, 1985 for support collected the previous year or if they could wait until the end of FY 1986 to provide the first notice. States may provide the annual notice based on support collected during any one-year period. States must provide the first notice of support collected in AFDC cases or non-AFDC cases in which there is overdue support assigned to the State by September 30, 1986.

State Guidelines for Child Support Awards (45 CFR 302.56)

The final regulation requires States to develop guidelines by law or by judicial or administrative action for setting child support awards within the State. The State is required to make these guidelines available to all officials who determine child support awards, although the guidelines need not be binding on them.

We received several comments on this provision. Some commenters stated that guidelines should be developed with public participation. The statute does not require this. However, we encourage States to contact the public and allow participation in developing guidelines. Since States are not required to establish guidelines until October 1, 1987, there is adequate time for a State to request and consider public comments of proposed guidelines. In addition, States will have public participation in connection with their State Commissions, which must be comprised of members representing all aspects of the child support system. These Commissions are required to give particular attention to problems associated with establishing appropriate objective standards for support.

Another commenter requested clarification regarding whether a State may use an effective date earlier than October 1, 1987. States are encouraged to develop guidelines for child support awards as soon as possible. They do not have to wait until October 1, 1987 to put guidelines into effect.

One commenter stated that guidelines for support awards should be descriptive rather than numeric. The final regulations require States to develop guidelines based on specific descriptive and numeric criteria that result in a computation of the support obligation. Numeric criteria include factors such as, but not limited to, income and resources of the parents and the number and needs of dependents.

Payment of Support Through the IV-D Agency or Other Entity (45 CFR 302.57)

In accordance with the statute and regulations, States may have tracking and monitoring procedures for the payment of support through the State IV-D agency or the entity designated by the State to administer the State's withholding system upon the request of either the custodial parent or the absent parent, regardless of whether or not arreareages exist or withholding procedures have been instituted. The State must charge the parent requesting this service an annual fee not to exceed the lesser of $25 or the actual costs incurred by the State in these non-IV-D cases.

One commenter asked if a request for tracking and monitoring payments is considered an application for IV-D services. Any absent or custodial parent, in a State which elects this option, may request tracking and monitoring of support payments without applying for IV-D services.

Another commenter asked if Federal funding is available for this service if the fee does not cover the State's costs. Federal funding is available only in the cost of providing services in IV-D cases. In addition, House Report No. 98-527, p.

40, states: "The Committee believes that the costs associated with such voluntary use should be borne by the party requesting the service rather than by taxpayers."

Imposition of Late Payment Fee on Absent Parents Who Owe Overdue Support (45 CFR 302.75)

This regulation allows the State IV-D agency to impose a late payment fee of 3 to 6 percent on individuals who owe overdue support.

One commenter stated that two sections of this provision appeared to be contradictory. One section states that the State plan may provide for imposition of late payment fees while another section states that the late payment fee must be imposed in AFDC, foster care, and non-AFDC cases. The regulations are not contradictory, but use "may" to indicate that it is optional, whether a State imposes a late payment fee. However, if a State chooses to impose a late payment fee, it must be imposed in all appropriate IV-D cases, including AFDC, foster care, and non-AFDC cases. For example, the State cannot choose to impose the late payment fee in AFDC cases only.

One commenter asked if the late payment fee is applied cumulatively or compounded and suggested we provide an example or formula to illustrate. The regulations state that the late payment fee is applied to arrearages, accrues as arrearages accumulate and is not reduced upon partial payment of arrears. Therefore, the late payment fee is cumulative and not compounded. The following example illustrates how late payment fees are computed. In the example, the monthly support obligation is $100 and the late fee is 5 percent of the arrearage. In the first month, $100 of arrearage accumulates, making the late payment fee $5. In the second month, an additional $100 arrearage and $5 fee accrues making the total arrearage $200 and total fee $10. In the third month an additional $100 arrearage and $5 fee accrues. In the fourth month, the individual pays current support plus $200 on the arrearage. The total arrearage is reduced to $100 and no additional fee is applied since no additional arrearage accrued. However, the total fee is still $15. The late payment fee is computed on a monthly basis, but cannot be collected until the arrearage has been fully satisfied. This is illustrated in the table below.

	1	2	3	4
Monthly arrearage	$100	$100	$100	−$200
Monthly late payment fee	5	5	5	0
Total arrearages	100	200	300	100
Total late payment fee	5	10	15	15

Another commenter asked if the late payment fee is in addition to cost recovery. The late payment fee is a penalty for non-payment of support and is charged in addition to cost recovery.

One commenter asked us to indicate the difference between interest and late payment fees. Late payment fees are not considered interest. Interest makes up for 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.

Another commenter asked that, if a State currently charges a 10 percent late payment fee statewide, is the State limited to imposing a maximum 6 percent rate in IV-D cases? The total late payment fee assessed an absent parent in IV-D cases may not exceed 6 percent of the maximum arrearage that was accumlated.

State Commissions on Child Support (45 CFR 304.95)

Section 15 of Pub. L. 98-378 and these regulations require States to appoint a Commission by December 1, 1984, which includes representatives of all aspects of the child support system. The Commission must examine the State's child support system and report its findings and recommendations to the Governor by October 1, 1985. Waivers of the Commission requirement are available under specified circumstances.

We received several comments on the provisions of the proposed regulations requiring each State to appoint a State Commission on Child Support. One commenter requested that the regulation define the objective standards for child support obligations which States must have in order for the Secretary to waive the requirement. Since the Commissions had to be appointed By December 1, 1984, we did not include criteria in these regulations. Another commenter asked us to include local enforcement representatives on the Commissions. We believe it is unnecessary to single out this group because the requirement calls for the Commission membership to represent all aspects of the child support system and this would include local enforcement personnel.

Three commenters stated that the lack of Federal matching funds for the costs of operating the Commissions would limit their effectiveness and activity. We do not feel that this will be the case. To date, the Governors of many States have expressed their support for the State Commissions.

One commenter felt that the Commissions should address the visitation issue. The statute and regulations call for the Commissions to determine the extent to which the child support system has been successful in securing support and parental involvement, giving particular attention to such specific problems (among others) as visitation. We believe that Commissions will address this issue under this provision.

Two other commenters requested that we publish State requests for waiver of the requirement in the Federal Register for public comment. We did not publish requests for waivers in the Federal Register because of the December 1 deadline for establishing Commissions. We did evaluate each request very carefully and held States to a very rigorous standard before granting waivers of this requirement. Waiver requests were received from thirteen States. Of these States, Arizona, California, Maryland, Washington, Wisconsin, and Rhode Island were granted waviers on the basis of having established within the previous five years a commission or council with substantially the same functions as the commissions provided for in the new law. Illinois, Maine, Michigan, and Utah were granted waivers based on their having in effect objective standards for the determination and enforcement of child support obligations. Three States Hawaii, Wyoming, and Mississippi) were denied waivers.

Availability of Services and Application Fee for Non-AFDC Families (45 CFR 302.33(c))

Beginning October 1, 1985, States must charge an application fee to individuals applying for non-AFDC services. Final regulations with a comment period on this provision were published in the Federal Register on September 19, 1984 (49 FR 36764). We are responding to comments received on that provision in this document.

One commenter asked whether the States will develop guidelines for waiving the application fee in appropriate cases. A second commenter indicated that the mandatory application fee will discourage application for IV-D services by individuals in need of them. A third commenter suggested that the regulations be revised to incorporate the statement in the preamble of the final regulations regarding the deduction of

the application fee from support collections.

States must charge the application fee for IV-D services. However, the regulations specify that the State may collect the application fee from the individual who is applying for IV-D services or pay the fee itself. The regulations also permit a State that elects to impose an application fee on the individual who applies for IV-D services to collect a fee based on the applicant's income. The IV-D agency may recover the fee from the absent parent. Lastly, former AFDC recipients receiving IV-D services under 45 CFR 302.51(e) are not required to pay an application fee.

Since application fees are required as of October 1, 1985, the State must collect the non-AFDC application fee from the non-AFDC individual at the time of application for IV-D services or pay the fee itself to ensure that the fee is paid in accordance with Federal law. In the preamble to the final regulations published September 19, 1984, we stated that States may allow applicants to decide to pay the fee at the time of application or have the fee deducted from collected support. Upon review, we realized that this could lead to cases where the fee is never paid because a collection was never made. To ensure that the statutory mandate is met, we are requiring that the application fee be paid at the time of application regardless of whether the State opts to impose the fee on applicants or pay it itself.

Several commenters suggested that we revise the regulations to specify that the application fee will only be charged by the applicant's State of residence. We have revised the regulations in this regard because the imposition of more than one application fee in an interstate case is inconsistent with Federal law and could place a financial burden on individuals in need of IV-D services. Therefore, the revised regulations specify that, in an interstate case, the application fee is paid in the State where the individual applies for services.

Several commenters suggested that the regulations regarding the mandatory application fee be revised to specify that an application fee cannot be charged to individuals receiving IV-D services prior to October 1, 1985. A commenter also suggested that the regulations regarding the mandatory application fee be revised to specify exemptions to application fee requirements contained in the foster care and post-AFDC distribution regulations.

We agree that the regulations should specify that the mandatory application fee only applies to non-AFDC individuals who apply for IV-D services on or after October 1, 1985 because the new law only imposes an application fee with respect to individuals who apply for IV-D services on or after that date. Therefore, we have revised the regulations to address this matter. It should be noted that, until October 1, 1985, Federal law and regulations permit the State to elect to charge an application fee to each individual who applies for IV-D services prior to that date.

The regulations require States to charge an application fee for each individual who files an application for IV-D service. AFDC cases and foster care maintenance cases are not subject to the application fee provisions because services are provided without the filing of an application for IV-D services. The regulations regarding the continuation of services once the family ceases to receive AFDC indicate that, at the end of the period not to exceed five months after the family went off AFDC, the State, if authorized to do so by the family, must continue to provide services to the family and pay any amounts collected to the family in accordance with the non-AFDC services provisions without requiring a formal application or application fee. The statute does not allow any other exemptions from the application fee.

One commenter asked about the use of application fees collected prior to the Child Support Enforcement Amendments of 1984 which exceed the new maximum application fee. A second commenter wanted to know to whom the application fee is paid when the State elects to pay the application fee itself.

Until October 1, 1985, the regulations permit a State that elects to charge an application fee to each individual who applies for IV-D services to use a fee schedule to determine the fee to be charged each applicant. A fee schedule must be based on applicant's income and designed so as not to discourage application for services by those most in need of them. Before October 1, 1985, a State using a fee schedule may charge certain individuals an application fee that exceeds the maximum $25 application fee that becomes effective on October 1, 1985. Application fees collected by the State IV-D program at any point in time must be treated as program income. The fees are also applied to the costs incurred in a given case prior to any cost recovery. If a State elects under the regulations to pay the application fee, the State must exclude from its quarterly expenditure claims for Federal funding the amount of the application fees.

One commenter suggested that State performance could be more fairly measured if the maximum application fee were changed to a uniform application fee. We believe that the new provisions give the States flexibility to develop application fees that will enable all individuals seeking IV-D services to apply for them. Effective October 1, 1985, the regulations permit the States to: (1) Charge a flat application fee not to exceed $25 or any higher or lower amount as the Secretary may determine to be appropriate to reflect changes in program costs, or (2) charge an application fee based on applicant's income not to exceed $25 or any higher or lower amount as the Secretary may determine to be appropriate to reflect changes in program costs. The regulations also permit the State to collect the mandatory application fee from the individual who is applying for IV-D services or pay the application fee out of State funds in accordance with statewide standards. The State may pay the fee for non-AFDC individuals who cannot afford to pay it. In addition, the regulations permit a State to recover the application fee from the absent parent who owes a support obligation and pay the recovered amount to the applicant or itself.

Several commenters stated that the provisions of the final regulations that require the State either to charge the application fee to the applicant or pay the fee itself are contrary to section 3(c) of Pub. L. 98-378, which provides that the application fee can be paid by the client, or the State, or the absent parent.

We believe that the regulations properly implement the new law. There is no provision in section 3(c) of the law for the fee to be "paid" by the absent parent directly. In discussing the application fee provision of the new law, House Report No. 98-925, page 45, indicates that the State may charge the fee to the custodial parent or pay the fee out of State funds. The Report further indicates in a separate sentence that the State may recover the fee from the absent parent. We believe that the regulations are consistent with Congressional intent.

One commenter suggested that, because the regulations remove from State control the flexibility provided in the statute to vary the application fee based on ability to pay, the regulations should be revised to incorporate the language of the statute. We believe that the regulations properly implement the new statutory application fee provisions. The statutory provisions

permit the States to vary the application fee among IV-D applicants based on ability to pay. However, the statutory provisions do not authorize the imposition of an application fee in excess of $25 unless the Secretary determines that a higher or lower amount is appropriate to reflect increases or decreases in administrative costs. The regulations give the States flexibility in determining the application fee within these statutory limits.

Technical Changes

We have made technical changes to the regulations in order to add clarity, to make them more uniform in style and to correct typographical errors and other inaccuracies.

Paperwork Reduction Act

The following sections of these regulations contain information collection requirements which are subject to OMB review under the Paperwork Reduction Act of 1980 (Pub. L. 95-511):

Section 302.17
Section 302.30
Section 302.31
Section 302.32(b)
Section 302.33 (a) and (c)
Section 302.50(a)
Section 302.51 (a) and (e)
Section 302.52
Section 302.54
Section 302.55
Section 302.56
Section 302.57
Section 302.70
Section 302.75
Section 303.52 (c)(2) and (d) (1) and (2)
Section 303.72(a)(4), (b), (c) (2) and (4), (d) (1) and (2), (e) (1) and (2), (f) (1), (2) and (3), (g) (2), (3), (4) and (5), (h)(3) and (i)(2)
Section 303.100 (b)(1) and (2)(ii), (c)(3) and (4), (d) (1) and (2), (g) (3) and (5) and (i)
Section 303.101 (c) (8) and (4) and (d)(1)
Section 303.102 (b), (c), (d), (e) (1) and (3), and (h)
Section 303.103 (a) and (b)
Section 303.104(b)
Section 303.105 (b) and (d)
Section 304.95 (d) and (f)
Section 307.10(b) (2) and (3)
Section 307.15(b) (2) and (5)

The public is not required to comply with these information collection requirements until OMB approves them under section 3507 of the Paperwork Reduction Act. A notice will be published in the Federal Register when OMB approval is obtained.

Economic Impact

The Child Support Enforcement program was established under title IV-D of the Act by the Social Services Amendments of 1974, for the purposes of enforcing the support obligations owed by absent parents to their children, locating absent parents, establishing paternity and obtaining child support. The IV-D program collected $2.38 billion in FY 1984—$1.0 billion on behalf of children receiving AFDC and $1.38 billion on behalf of children not receiving AFDC. Federal, State and local expenditures amounted to $699 million. Collections for AFDC families are used to offset the costs of assistance payments made to such families.

The intent of the new law, which this rule implements, is to increase the effectiveness of the Child Support Enforcement program by requiring all States to adopt certain procedures that have been found to be successful in several of the States, by emphasizing the need to serve all families and by changing the incentive system for State participation. As discussed below, the statute has broad impacts, affecting Federal, State, and local participants in the program, employers of absent parents, and the families themselves. One immediate result will be lower welfare costs to the taxpayer. Although hard data are not available, it is expected that the mandatory procedures will result in increased collections and decreased administrative costs.

For the most part this regulation merely restates provisions of the new statute and does not result in any cost or other impacts on its own. The principal impacts of the statute are on Federal and State budgets and State operations. Federal and State expenditures are projected to increase by about $24 million over the five-year period FY 1985 to 1989, an average annual impact of $6 million. Savings will result from the increase in child support collections due to the implementation of the required State enforcement procedures and assumed decline in attendant court and other administrative costs. The additional child support collections on behalf of AFDC families are estimated to be about $45 million in FY 1986, increasing to nearly $92 million in FY 1989. In addition, non-AFDC collections are expected to increase approximately $55 million per year as a result of the new statute.

A number of provisions of the new law are likely to result in a significant increase in the number of non-AFDC families in the program. Federal costs of providing services for the additional families is projected to be $11 million in FY 1986, rising to nearly $15 million by FY 1989. Although the statute requires the States to impose an application fee for non-AFDC families to recover some of these costs, the Department believes that in most cases actual costs will exceed the legislatively mandated ceiling of $25. However, the Department also believes that costs will also be partially offset as a result of reduced public assistance expenditures for these families, including reductions in Medicaid. (As discussed earlier, the application fee provision was implemented separately. Our response to comments on the provision are included in this document.

Executive Order 12291

The Secretary has determined, in accordance with Executive Order 12291, that this rule does not constitute a "major" rule. A major rule is one that is likely to result in:

- —An annual effect on the economy of $100 million or more;
- —A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or
- —Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or import markets.

Virtually all of the economic impact discussed above is a direct result of legislative provisions rather than of regulatory provisions. The few provisions that have been added at the discretion of the Secretary are expected to have an insignificant effect on State and Federal expenditures.

Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96-354), that these regulations will not result in a significant impact on a substantial number of small entities. The primary impact is on State governments and individuals, which are not considered small entities under the Act; and results from restating the provisions of the statute. Those provisions that have any impact on small entities are discussed below.

Section 303.52 prescribes a new incentive system that will award the States and political subdivisions based on AFDC, foster care and non-AFDC collections. The Department estimates that the States and political subdivisions will receive an additional $18 million in incentive payments for FY 1986 increasing to $25 million for FY 1989. A significant portion of the additional incentives will be retained by the States. The legislation requires that States have

the flexibility to determine how to distribute incentive payments to political subdivisions; therefore, we cannot determine the amount of additional incentives that will be paid to political subdivisions or the economic effect of such payments on political subdivisions. However, even if there were a significant effect on a substantial number of political subdivisions, that effect is the result of the new law, and not these regulatory provisions.

Regulations at § 303.100 require the employer to withhold from the individual's wages the amount specified in a notice from the State. The regulations further permit, at State option, the employer to charge a reasonable fee, as determined by the State, for administrative costs incurred for each withholding. These regulatory provisions which implement statutory requirements are expected to have a minimal economic impact on employers because the costs of withholding amounts from the wages of employees will in most instances be offset by fees charged by employers to employees subject to wage withholding and because employers are used to withholding employee wages for other purposes.

Private attorneys whose practices are based on a large number of child support cases could possibly be affected by the required State procedures prescribed in the proposed §§ 303.100 through 303.105. These procedures, which implement statutory provisions in section 466 of the Act, may make IV-D services at both the State and local levels more attractive to custodial parents. However, we believe that the impact on private attorneys will be minimal because many custodial parents who avail themselves of IV-D services have small incomes and are unable to afford the fees of private attorneys. In any event, these impacts result from the statutory provisions rather than these regulations.

List of Subjects

45 CFR Parts 301, 302, 303, and 304

Child welfare, Grant programs—social programs.

45 CFR Part 305

Child welfare, Grant programs—social programs, Accounting.

45 CFR Part 307

Child welfare, Grant programs—social programs, Computer technology.

PART 301 [AMENDED]

The authorities for parts 301 through 305 and 307 are revised to read as follows:

42 U.S.C. 652 through 658, 664, 666, 667, and 1302, unless otherwise noted.

1a. 45 CFR 301.1 is amended by inserting the following definition of the term "Applicable matching rate" after the definition of the term "Act" and the definition of the terms "Overdue support" and "Past-due support" after the definition of the term "Office":

§ 301.1 General definitions.

* * * * *

"Applicable matching rate" means the rate of Federal funding of State IV-D programs' administrative costs for the appropriate fiscal year as follows:
FY 1983 through FY 1987, 70 percent
FY 1988 and FY 1989, 68 percent
FY 1990 and thereafter, 66 percent

* * * * *

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

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

* * * * *

PARTS 302 THROUGH 305—[AMENDED]

2. 45 CFR Parts 302 through 305 are amended as follows:

A. By revising § 302.17 to read as follows:

§ 302.17 Inclusion of State statutes.

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

B. By adding a new § 302.30 to read as follows:

§ 302.30 Publicizing the availability of support enforcement services.

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

C.1. By revising § 302.31 to read as follows:

§ 302.31 Establishing paternity and securing support.

The State plan shall provide that:

(a) The IV-D agency will undertake:

(1) In the case of a child born out of wedlock with respect to whom an assignment under § 232.11 of this title or section 471(a)(17) of the Act is effective, to establish the paternity of such child; and

(2) In the case of any individual with respect to whom an assignment under § 232.11 of this title or section 471(a)(17) of the Act is effective, to secure support for a child or children from any person who is legally liable for such support, using State laws and reciprocal arrangements adopted with other States when appropriate. Effective October 1, 1985, this includes securing support for a spouse or former spouse who is living with the child or children, but only if a support obligation has been established for that spouse and the child support obligation is being enforced under the title IV-D State plan.

(b) Upon receiving notice from the IV-A or IV-E agency that there has been a claim of good cause under § 232.40 of this title, the IV-D agency will suspend all activities to establish paternity or secure support until notified of a final determination by the IV-A or IV-E agency.

(c) The IV-D agency will not undertake to establish paternity or

secure support in any case for which it has received notice from the IV-A or IV-E agency that there has been a finding of good cause pursuant to §§ 232.40 through 232.49 of this title unless there has been a determination by the State or local IV-A or IV-E agency that support enforcement may proceed without the participation of the caretaker or other relative. If there has been such a determination, the IV-D agency will undertake to establish paternity or secure support but may not involve the caretaker or other relative in such undertaking.

§ 302.32 and § 302.33 [Amended]

C.2. By substituting the word "that" for the word "if" and the words "provide services" for the words "collect and distribute current support payments" in the last sentence of § 302.32(b), and amending § 302.33 by revising paragraphs (a), (b) and (c) to read as follows:

§ 302.33 Individuals not otherwise eligible for paternity and support services.

(a) *Availability of services.* The State plan must provide that the support collection or paternity determination services established under the plan shall be made available to any individual not receiving assistance under the Aid to Families with Dependent Children (AFDC) program who files an application for the services with the IV-D agency. In an interstate case, only the initiating State may require an application under this section.

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

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

(c) *Application fee.* (1) Until October 1, 1985, the State plan may provide for an application fee to be charged each individual who applies for services under this section. If the State elects to charge a fee, the State plan shall specify either:

(i) A flat dollar amount not to exceed $25 to be charged each applicant; or

(ii) A fee schedule to be used to determine the fee to be charged each applicant. Such fee schedule will be based on each applicant's income and will be designed so as not to discourage the application for such services by those most in need of them.

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

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

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

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

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

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

(B) An amount based on a fee schedule not to exceed the flat dollar amount specified in paragraph (c)(2)(iv)(A) of this section. The fee schedule must be based on the applicant's income.

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

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

* * * * *

§ 302.35 [Amended]

D. By removing § 302.35(d).

E. By revising § 302.51 (a) and (c) to read as follows:

§ 302.51 Distribution of support collections.

The State plan shall provide as follows:

(a) For the purposes of distribution under this section, 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. (The IV-D agency may round off the converted amount to whole dollar amounts for the purposes of distribution under this section, § 302.52 and § 303.52.) The date of collection shall be the date on which the payment is received by the IV-D agency or the legal entity of the State or political subdivision actually making the collection on behalf of the IV-D agency. For purposes of interstate collections, the date of collection shall be the date on which the payment is received by the IV-D agency in the State in which the family is receiving aid. In any case in which collections are received by an entity other than the agency responsible for final distribution under this section, the entity must transmit the collection within 10 days of receipt.

* * * * *

(c) Effective October 1, 1984, whenever a family ceases to receive assistance under the title IV-A State plan, the IV-D agency must:

(1) Continue to provide all appropriate title IV-D services for a period not to exceed three months from the month following the month in which the family ceased to receive assistance under the title IV-A State plan. The State may not charge fees or recover costs from support collections and must pay all amounts collected which represent monthly support payments to the family;

(2) Notify the family before the end of the period specified in paragraph (e)(1) of this section of the consequences of continuing to receive IV-D services, including the available services and the State's fees, cost recovery and distribution policies. The notice must inform the family that services will be continued unless the IV-D agency is notified to the contrary;

(3) At the end of the period referred to in paragraph (e)(1) of this section, if the IV-D agency is authorized to do so by the individual on whose behalf the services will be rendered, continue to provide all appropriate title IV-D services and pay any amounts collected which represents monthly support collections to the family in accordance with the requirements of § 302.33 of this part, except that the IV-D agency may not require any formal application or impose any application fee; and

(4) Report collections under this paragraph as non-AFDC collections.

* * * * *

§§ 302.50, 304.20, 305.25 and 305.27 [Amended]

F. By inserting the phrase "or section 471(a)(17) of the Act" immediately after the phrase "§ 232.11 of this title" in the following sections: Sections 302.50(a), 304.20(a)(1), 305.25(a)(1) and 305.27(a).

G. By adding a new § 302.52 to read as follows:

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

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

(a) For purposes of distribution under this section, amounts collected in foster care maintenance cases shall be treated

in accordance with the provisions of § 302.51(a) of this part.

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

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

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

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

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

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

(4) Any balance shall be paid to the State agency responsible for supervising the child's placement and care and shall be used to serve the best interests of the child as specified in paragraph (b)(2) of this section.

(5) If an amount collected as support represents payment on the required support obligation for future months, the amount shall be applied to those future months. However, no amounts shall be applied to future months unless amounts have been collected which fully satisfy the support obligation assigned under § 232.11 of this title and sections 471(a)(17) of the Act for the current month and all past months.

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

H. By adding a new § 302.54 to read as follows:

§ 302.54 Notice of collection of assigned support.

(a) Effective October 1, 1985, the State plan shall provide that the IV-D agency, at least annually, must send a notice of the amount of support payments collected during the past year to individuals who have assigned rights to support under § 232.11 of this title.

(b) The notice must list separately payments collected from each absent parent when more than one absent parent owes support to the family and must indicate the amount of support collected which was paid to the family.

I. By adding a new § 302.55 to read as follows:

§ 302.55 Incentive payments to States and political subdivisions.

Effective October 1, 1985, in order for the State to be eligible to receive any incentive payments under § 303.52 of this chapter, the State plan shall provide that, if one or more political subdivisions of the State participate in the costs of carrying out the activities under the State plan during any period, each such subdivision shall be entitled to receive an appropriate share of any incentive payments made to the State for such period, as determined by the State in accordance with § 305.52(d) of this chapter, taking into account the efficiency and effectiveness of the political subdivision in carrying out the activities under the State plan.

J. By adding a new § 302.56 to read as follows:

§ 302.56 Guidelines for setting child support awards.

(a) Effective October 1, 1957, as a condition for approval of its State plan, the State shall establish guidelines by law or by judicial or administrative action for setting child support award amounts within the State.

(b) The State shall have procedures for making the guidelines available to all persons in the State whose duty it is to set child support award amounts, but the guidelines need not be binding on those persons.

(c) The guidelines must be based on specific descriptive and numeric criteria and result in a computation of the support obligation.

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

K. By adding a new § 302.57 to read as follows:

§ 302.57 Procedures for the payment of support through the IV-D agency or other entity.

(a) Effective October 1, 1985, the State may have in effect and use procedures for the payment of support through the State IV-D agency or the entity designated by the State to administer the State's withholding system upon the request of either the absent parent or custodial parent, regardless of whehter or not arrearages exist or withholding procedures have been instituted.

(b) If the State opts to establish procedures described in paragraph (a) of this section, the State must:

(1) Monitor all amounts paid and the dates of payments and record them on an individual payment record;

(2) Ensure prompt payment to the custodial parent; and

(3) Require the requesting parent to pay a fee for the cost of providing the service not to exceed $25 annually and not to exceed State costs.

L. By adding a new § 302.70 to read as follows:

§ 302.70 Required State laws.

(a) *Required laws.* Effective October 1, 1985, the State plan shall provide that, in accordance with sections 454(20) and 466 of the Act, the State has in effect laws providing for and has implemented the following procedures to improve programs effectiveness:

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

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

(3) Procedures for obtaining overdue support from State income tax refunds on behalf of recipients of aid under the State's title IV-A or IV-E plan with respect to whom an assignment under § 232.11 of this title or section 471(a)(17) of the Act is effective, and on behalf of individuals who apply for services under § 302.33 of this part in accordance with the requirements set forth in § 303.102 of this chapter;

(4) Procedures for the imposition of liens against the real and personal property of absent parents who owe overdue support, in accordance with the requirements set forth in § 303.103 of this chapter;

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

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

(7) Procedures for making information regarding the amount of overdue support owed by an absent parent available to consumer reporting agencies, in accordance with § 303.105 of this chapter; and

(8) Procedures under which all child support orders which are 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 arreareages occur without the necessity of filing application for services under § 302.33 of this part, in accordance with § 303.100(h) of this chapter.

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

(c) State laws enacted under this section must give States sufficient authority to comply with the requirements of §§ 303.100 through 303.105 of this chapter.

(d)(1) *Exemption.* A State may apply for an exemption from any of the requirements of paragraphs (a)(1) through (8) of this section by the submittal of a request for exemption to the appropriate Regional Office.

(2) *Basis for granting exemption.* The Secretary will grant a State, or political subdivision in the case of paragraph (a)(2), an exemption from any of the requirements of paragraphs (a)(1) through (8) of this section for a period not to exceed three years if the State demonstrates that compliance would not increase the effectiveness and efficiency of its Child Support Enforcement program. Demonstration of the program's efficiency and effectiveness must be shown by actual, or, if actual is not available, estimated data pertaining to caseloads, processing times, administrative costs, and average support collections or such other actual or estimated data as the Office may request. The State must demonstrate to the satisfaction of the Secretary that the program's effectiveness would not improve by using these procedures. Disapproval of a request for exemption is not subject to appeal.

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

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

(5) *When an exemption is revoked or an extension is denied.* If the Secretary revokes an exemption or does not grant an extension of an exemption, the State must enact the appropriate laws and procedures to implement the mandatory practice by the beginning of the fourth month after the end of the first regular, special, budget or other session of the State's legislature which ends after the date the exemption is revoked or the extension is denied. If no State law is necessary, the State must establish and be using the procedure by the beginning of the fourth month after the date the exemption is revoked.

M. By adding a new § 302.75 to read as follows:

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

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

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

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

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

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

(4) The late payment fee must be imposed in cases where there is an assignment under § 232.11 of this title or section 471(a)(17) of the Act or where an application for services has been filed under § 302.33 of this part.

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

(6) The State must reduce its expenditures claimed under the Child Support Enforcement program by any fees collected under this section in accordance with § 305.50 of this chapter.

§§ 303.2 through 303.5 and 303.7 [Amended]

N. By removing the phrase "pursuant to § 235.70 of this title" in §§303.2 through 303.5 and adding the words "or IV-E" between the words "IV-A" and "plan" in § 303.7(b)(1).

O. By revising § 303.52 to read as follows:

§ 303.52 Incentive payments to States and political subdivisions.

(a) *Definitions.* For the purposes of this section:

"AFDC collections" means support collections satisfying an assigned support obligation under § 232.11 of this title or section 471(a)(17) of the Act, including collections treated in accordance with paragraph (b)(4)(ii) of this section.

"Non-AFDC collections" means support collections, on behalf or individuals receiving services under this

title, satisfying a support obligation which has not been assigned under § 232.11 of this title or section 471(a)(17) of the Act, including collections treated in accordance with paragraph (b)(4)(ii) of this section and collections made under §§ 302.51(e) of this chapter.

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

"Total IV-D administrative costs" means total IV-D administrative expenditures claimed by a state in a specified fiscal year adjusted in accordance with paragraphs (b)(4)(iii), (b)(4)(iv) and (b)(4)(v) of this section.

(b) *Incentive payments to States.* Effective October 1, 1985, the Office shall compute incentive payments for States for a fiscal year in recognition of AFDC collections and of non-AFDC collections.

(1) A portion of a State's incentive payment shall be computed as a percentage of the State's AFDC collections, and a portion of the incentive payment shall be computed as a percentage of its non-AFDC collections. The percentages are determined separately for AFDC and non-AFDC portions of the incentive. The percentages are based on the ratio of the State's AFDC collections to the State's total administrative costs and the State's non-AFDC collections to the State total administrative costs and the State's non-AFDC collections to the State's total administrative costs in accordance with the following schedule.

Ratio of collections to total IV-D administrative costs	Percent of collection paid as an incentive
Less than 1.4	6.0
At least 1.4	6.5
At least 1.6	7.0
At least 1.8	7.5
At least 2.0	8.0
At least 2.2	8.5
At least 2.4	9.0
At least 2.6	9.5
At least 2.8	10.0

(2) The ratios of the State's AFDC and non-AFDC collections to total IV-D administrative costs will be truncated at one decimal place.

(3) The portion of the incentive payment paid to a State for a fiscal year in recognition of its non-AFDC collections is limited to the percentage of the portion of the incentive payment paid for that fiscal year in recognition of its AFDC collections, as follows:

(i) 100 percent in fiscal years 1986 and 1987;

(ii) 105 percent in fiscal year 1988;

(iii) 110 percent in fiscal year 1989; and

(iv) 115 percent in fiscal year 1990 and thereafter.

(4) In calculating the amount of incentive payments, the following conditions apply:

(i) Only those AFDC and non-AFDC collections distributed and expenditures claimed by the State in the fiscal year shall be used to determine the incentive payment payable for that fiscal year;

(ii) Support collected by one State on behalf of individuals receiving IV-D services and parents residing in another State shall be treated as having been collected in full by each State;

(iii) Fees paid by individuals, recovered costs, and program income such as interest earned on collections shall be deducted from total IV-D administrative costs;

(iv) At the option of the State, laboratory costs incurred in determining paternity may be excluded from total IV-D administrative costs; and

(v) Amounts expended by the State in carrying out a special project under section 455(e) of the Act shall be included in the State's total IV-D administrative costs.

(c) *Payment of incentives.* (1) The Office will estimate the total incentive payment that each State will receive for the upcoming fiscal year.

(2) Each State will include one-quarter of the estimated total payment in its quarterly collection report which will reduce the amount that would otherwise be paid to the Federal government to reimburse its share of assistance payments under §§ 302.51 and 302.52 of this chapter.

(3) Following the end of a fiscal year, the Office will calculate the actual incentive payment the State should have received based on the reports submitted for that fiscal year. If adjustments to the estimate made under paragraph (c)(1) of this section are necessary, the State's IV-A grant award will be reduced or increased because of over- or under-estimates for prior quarters and for other adjustments.

(4) For FY 1985, the Office will calculate a State's incentive payment based on AFDC collections retained by the State and paid to the family under § 302.51(b)(1) of this chapter.

(5) For FY 1986 and 1987, a State will receive the higher of the amount due it under the incentive system and Federal matching rate in effect as FY 1986 or 80 percent of what it would have received under the incentive system and Federal matching rate in effect during FY 1985.

(d) *Pass through of incentives to political subdivisions.* The State must calculate and promptly pay incentives to political subdivisions as follows:

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

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

(e) *Information in interstate cases.* If a State or political subdivision requests another State or political subdivision to make a collection, the State where the case originates must identify the case as an AFDC, non-AFDC or foster care maintenance case at the time of the request and at any time the case changes status.

(f) *Time frames and use of codes.* (1) A State or political subdivision that makes a collection on behalf of another State, political subdivision of another State or an individual who resides in another State who has applied for IV-D services shall transmit the entire amount of the collection to the location specified by the State where the case originated, no later than 10 days after the collection was received.

(2) The collecting State or political subdivision forwarding a support collection to another State or political subdivision must include, as appropriate, the code identifying the collecting State or political subdivision as defined in:

(i) The Federal Information Processing Standards Publication (FIPS) issued by the National Bureau of Standards; or

(ii) The Worldwide Geographical Location Codes issued by the General Services Administration.

(3) The State or political subdivision where the case originated shall use the codes to track the collection.

P. By revising § 303.72 to read as follows:

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

(a) *Past-due support qualifying for offset.* Past-due support as defined in

§ 301.1 of this chapter qualifies for offset if:

(1) There has been an assignment of the support rights under § 232.11 of this title or section 471(a)(17) of the Act to the State making the request for offset or an application for IV–D services filed with the IV–D agency under § 302.33 of this chapter.

(2) For support which has been assigned to the State under § 232.11 of this title or section 471(a) (17) of the Act:

(i) The amount of the support is not less than $150; and

(ii) The support has been delinquent for three months or longer.

(3) For support owed in cases where an application for IV–D services is filed with the IV–D agency pursuant to § 302.33 of this chapter:

(i) The support is owed to or on behalf of a minor child;

(ii) The amount of support is not less than $500;

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

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

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

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

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

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

(5) Before submittal, the State IV–D agency has verified the accuracy of the name and social security number of the absent parent and the accuracy of the past-due support amount. If the State IV–D agency has verified this information previously, it need not reverify it.

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

(b) *Notification to OCSE of liability for past-due support.* (1) A State IV–D agency shall submit a notification (or notifications) of liability for past-due support on a magnetic tape to the Office by the submittal date specified by the Office in instructions.

(2) The notification of liability for past-due support shall contain with respect to each delinquency:

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

(ii) The social security number of that taxpayer;

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

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

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

(3) The notification of liability for past-due support may contain with respect to each delinquency the taxpayer's IV–D case number and FIPS code for the local IV–D agency where the case originated.

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

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

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

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

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

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

(e) *Notices of offset.* (1) *Advance.* The Office, or the State IV–D agency if it elects to do so, shall send a written advance notice to inform an absent parent that the amount of his or her past-due support will be referred to the IRS for collection by Federal tax refund offset. The notice must inform absent parents:

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

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

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

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

(2) *At offset.* The IRS will notify the absent parent that the offset has been made. The IRS will also notify any individual who filed a joint return with the absent parent of the steps to take in order to secure a proper share of the refund.

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

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

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

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

(g) *Procedures for contesting in interstate cases.* (1) If the absent parent requests an administrative review in the submitting State, the IV–D agency must

meet the requirements in paragraph (f) of this section.

(2) If the complaint cannot be resolved by the submitting State and the absent parent requests an administrative review in the State with the order upon which the referral for offset is based, the submitting State must notify the State with the order of the request for an administrative review and provide that State with all necessary information, including the information listed under paragraph (a)(4) of this section, within 10 days of the absent parent's request for an administrative review.

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

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

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

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

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

(8) In computing incentives under § 303.52 of this part, if the case is referred to the State with the order for an administrative review, the collections made as a result of Federal tax refund offset will be treated as having been collected in full by both the submitting State and the State with the order.

(h) *Distribution of collections.* (1) Collections received by the IV–D agency as a result of refund offset to satisfy AFDC or non-AFDC past-due support shall be distributed as past-due support as required under § 302.51(b) (4) and (5) of this chapter.

(2) Collections received by the IV–D agency in foster care maintenance cases shall be distributed as past-due support under § 302.52(b) (3) and (4) of this chapter.

(3) The IV–D agency must inform individuals who apply for services under § 302.33 of this chapter in advance that amounts offset will be applied first to satisfy any past-due support which has been assigned to the State under §232.11 of this title or section 471(a)(17) of the Act and submitted for Federal tax refund offset.

(4) If the 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) of this chapter, 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.

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

(6) Collections from offset may be applied only against the past-due support which was specified in the advance notice described in paragraph (e)(1) of this section.

(i) *Payment of fee.* (1) A refund offset fee, in such amount as the Secretary of the Treasury and the Secretary of Health and Human Services have agreed to be sufficient to reimburse the IRS for the full cost of the offset procedure, shall be billed and collected from the IV–D agency by the Secretary of Health and Human Services or designee and credited to the IRS appropriations which bore all or part of the costs involved in making the collection. The fee which the Secretary of the Treasury may impose with respect to non-AFDC submittals shall not exceed $25 per submittal.

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

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

(k) *Limitation of referral for offset of non-AFDC past-due support.*

Offset of Federal income tax refunds to satisfy past-due support in non-AFDC cases is limited to refunds payable under section 6402 of the Internal Revenue Code of 1954 after December 31, 1985, and before January 1, 1991.

Q. By adding new §§ 303.100 through 303.105 to read as follows:

§ 303.100 Procedures for wage or income withholding.

(a) *Withholding requirement.* (1) The State must ensure that in the case of each absent parent against whom a support order is or has been issued or modified in the State, and is being enforced under the State plan, so much of his or her wages must be withheld, in accordance with this section, as is necessary to comply with the order.

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

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

(4) In the case of a support order being enforced under the State plan, the withholding must occur without the need for any amendment to the support order involved or any further action by the court or entity that issued it. The State must take steps to implement the withholding and to send the advance notice required under paragraph (b) of this section on the earliest of: (i) the date on which the parent fails to make payments in an amount equal to the support payable for one month, (ii) such earlier date that is in accordance with State law, or (iii) the date on which the absent parent requests withholding.

(5) The only basis for contesting a withholding under this section is a mistake of fact, which for purposes of this section means an error in the amount of current or overdue support or the identity of the alleged absent parent.

(6) If 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 Corporation Act (15 U.S.C. 1673(b)).

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

(8) Payment of overdue support upon receipt of the notice required under paragraph (b) of this section may not be the sole basis for not implementing withholding.

(9) The State must have procedures for promptly terminating the withholding, but in no case should payment of overdue support be the sole basis for termination of withholding.

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

(b) *Advance notice to absent parent.* (1) On the date the absent parent fails to make payments in an amount equal to the support payable for one month, the State must take steps to send advance notice to the absent parent regarding the delinquency of support payments and the potential withholding. The notice must inform the absent parent:

(i) Of the amount of overdue support that is owed and the amount of wages that will be withheld;

(ii) That the provision for withholding applies to any current or subsequnet employer or period of employment;

(iii) Of the procedures available for contesting the withholding and that the only basis for contesting the withholding is a mistake of fact;

(iv) Of the period within which the absent parent must contact the State in order to contest the withholding and that failure to contact the State within the specified time limit will result in the State notifying the employer to begin withholding; and

(v) Of the actions the State will take if the individual contests the withholding, including the procedures established under paragraph (c) of this section.

(2)(i) The requirements for advance notice to the absent parent under paragraph (b)(1) of this section and for State procedures when the absent parent contests withholding in response to the advance notice under paragraph (c) of this section do not apply in the case of any State which has a withholding system in effect on August 16, 1984 if the system provides on that date, and continues to provide, any other procedures as may be necessary to meet the procedural due process requirements of State law.

(ii) Any State in which paragraph (b)(2)(i) of this section applies must take steps to send notice to the employer under paragraph (d) of this section on the date on which the absent parent fails to make payments in an amount equal to the support payable for one month and must meet all other requirements of this section.

(c) *State procedures when the absent parent contests withholding in response to the advance notice.* The State must establish procedures for use when an absent parent contests the withholding. Within 45 days of advance notice to the absent parent under paragraph (b) of this section, the State must:

(1) Provide the absent parent an opportunity to present his or her case in the State;

(2) Determine if the withholding shall occur based on an evaluation of the facts, including the absent parent's statement of his or her case;

(3) Notify the absent parent whether or not the withholding is to occur and if it is to occur, include in the notice the time frames within which the withholding will begin and the information given to the employer in the notice required under paragraph (d) of this section.

(4) If withholding is to occur, send the notice required under paragraph (d) of this section.

(d) *Notice to the employer.* (1) To initiate withholding, the State must send the absent parent's employer a notice which includes the following:

(i) The amount to be withheld from the absent parent's wages, and a statement that the amount actually withheld for support and other purposes, including the fee specified under paragraph (d)(1)(iii) of this section, may not be in excess of the maximum amounts permitted under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. 1873(b));

(ii) That the employer must send the amount to the State within 10 days of the date the absent parent is paid, unless the State directs that payment be made to another individual or entity;

(iii) That, in addition to the amount withheld under paragraph (d)(1)(i) of this section, the employer may deduct a fee established by the State for administrative costs incurred for each withholding, if the State permits a fee to be deducted;

(iv) That withholding is binding upon the employer until further notice by the State;

(v) That the employer is subject to a fine to be determined under State law for discharging an absent parent from employment, refusing to employ, or taking disciplinary action against any absent parent because of the withholding.

(vi) That if the employer fails to withhold wages in accordance with the provisions of the notice, the employer is liable for the accumulated amount the employer should have withheld from the absent parent's wages;

(vii) That the withholding under this section shall have priority over any other legal process under State law against the same wages;

(viii) That the employer may combine withheld amounts from absent parents' wages in a single payment to each appropriate agency requesting withholding and separately identify the portion of the single payment which is attributable to each individual absent parent;

(ix) That the employer must implement withholding no later than the first pay period that occurs after 14 days following the date the notice was mailed; and

(x) That the employer must notify the State promptly when the absent parent terminates employment and provide the absent parent's last known address and the name and address of the absent parent's new employer, if known.

(2) If the absent parent fails to contact the State to contest withholding within the period specified in the advance notice in accordance with (b)(1)(iv) of this section, the State must immediately send the notice to the employer required under paragraph (d)(1) of this section.

(3) If the absent parent changes employment within the State when a withholding is in effect, the State must notify the absent parent's new employer in accordance with the requirements of paragraph (d)(1) of this section that the withholding is binding on the new employer.

(e) *Administration of wage withholding procedures.* (1) The State must designate a public agency to administer wage withholding in accordance with procedures specified by the State for keeping adequate records to document, track, and monitor support payments. The State may designate public or private entities to administer withholding on a State or local basis under the supervision of the State withholding agency if the entity or entities are publicly accountable and follow the procedures specified by the State. The State may designate only one entity to administer withholding in each jurisdiction.

(2) Amounts withheld must be distributed promptly in accordance with section 457 of the Act and §§ 302.33, 302.51 and 302.52 of this chapter. The State must reduce its IV-D expenditures by any interest earned by the State's designee on withheld amounts.

(f) *Income withholding.* The State may extend its system of withholding to include withholding from forms of income other than wages.

(g) *Interstate withholding.* (1) The State law must provide for procedures to extend the State's withholding system so that the system will include withholding from income or wages derived within the State in cases where the applicable support orders were issued in other States.

(2) The State law must require employers to comply with a withholding notice issued by the State.

(3) When withholding is required in a particular case, the State in which the custodial parent applied for IV-D

services must promptly notify the IV-D agency of the State in which the absent parent is employed to implement interstate withholding. The notice must contain all information necessary to carry out the withholding, including the amount requested to be withheld, a copy of the support order and a statement of arrearages. If necessary, the State where the support order is entered must promptly provide the information necessary to carry out the withholding when requested by the State where the custodial parent applied for services.

(4) Withholding must be implemented promptly by the State in which the absent parent is employed upon receipt of the notice required in paragraph (g)(3) of this section.

(5) The State in which the absent parent is employed must:

(i) Provide notice to the absent parent in accordance with the requirements in paragraph (b) of this section;

(ii) Provide the absent parent with an opportunity to contest the withholding in accordance with paragraph (c) of this section; and

(iii) Provide notice to the employer in accordance with the requirements of paragraph (d) of this section.

(iv) Notify the State in which the custodial parent applied for services when the absent parent terminates employment within the State and provide the name and address of the absent parent and new employer, if known.

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

(7) Except with respect to when withholding must be implemented which is controlled by the State where the support order was entered, the law and procedures of the State in which the absent parent is employed shall apply.

(h) *Provision for withholding in new or modified child support orders.* Child support orders issued or modified in the State must have a provision for withholding of wages, in order to ensure that withholding as a means of support is available if arrearages occur without the necessity of filing an application for IV-D services. This requirement does not alter the requirement governing all IV-D cases in paragraph (a)(4) of this section that enforcement under the State plan must proceed without the need for a withholding provision in the order.

§ 303.101 Expedited processes.

(a) *Definition.* "Expedited processes" means administrative or expedited judicial processes or both which increases effectiveness and meet processing times specified in paragraph (b)(2) of this section and under which the presiding officer is not a judge of the court.

(b) *Basic requirement.* (1) The State must have in effect and use expedited processes as specified under this section to establish and enforce support orders in intrastate and interstate cases.

(2) Under expedited processes, actions to establish or enforce support obligations in IV-D cases must be completed from the time of filing to the time of disposition within the following time frames: (i) 90 percent in 3 months; (ii) 98 percent in 6 months; and (iii) 100 percent in 12 months.

(3) The State may include paternity establishment in the expedited processes in effect in the State.

(4) If a case involves complex issues requiring judicial resolution, the State must establish a temporary support obligation under expedited processes and may then refer to unresolved issues to the full judicial system for resolution.

(c) *Safeguards.* Under expedited processes:

(1) Orders established must have the same force and effect under State law as orders established by full judicial process within the State.

(2) The due process rights of the parties involved must be protected;

(3) The parties must be provided a copy of the order;

(4) There must be written procedures for ensuring the qualification of residing officers;

(5) Recommendations of presiding officers may be ratified by a judge; and

(6) Action taken may be reviewed under the State's generally applicable judicial procedures.

(d) *Functions.* The functions performed by presiding officers under expedited processes must include at minimum:

(1) Taking testimony and establishing a record;

(2) Evaluating evidence and making recommendations or decisions to establish and enforce orders;

(3) Accepting voluntary acknowledgement of support liability and stipulated agreements setting the amount of support to be paid and, if the State establishes paternity using expedited processes, accepting voluntary acknowledgement of paternity; and

(4) Entering default orders if the absent parents does not respond to notice or other State process within a reasonable period of time specified by the State.

(e) *Exemption for political subdivisions.* A State may request an exemption from the requirements of this section for a political subdivision on the basis of the effectiveness and timeliness of support order issuance and enforcement within the political subdivision, in accordance with the provisions of § 302.70(d) of this chapter.

§ 303.102 Collection of overdue support by State income tax refund offset.

(a) *Overdue support qualifying for offset.* Overdue support qualifies for State income tax refund offset if:

(1) There has been an assignment of the support obligation under § 232.11 of this title or section 471(a)(17) of the act to the State making the request for offset or an application for IV-D services filed with the IV-D agency under § 302.33 of this chapter, and

(2) The State does not determine, using guidelines it must develop which are generally available to the public, that the case is inappropriate for application of this procedure.

(b) *Accuracy of amounts referred for offset.* The IV-D agency must establish procedures to ensure that:

(1) Amounts referred for offset have been verified and are accurate; and

(2) The appropriate State office or agency is notified of any significant reductions in (including an elimination of) an amount referred for collection by State income tax refund offset.

(c) *Notice to custodial parent in non-AFDC cases.* In non-AFDC cases, the State must inform the non-AFDC custodial parent in advance if it will first use any offset amount to satisfy any unreimbursed AFDC and foster care maintenance payments which have been provided to the family.

(d) *Advance notice to absent parent.* The State must send a written advance notice to inform the absent parent of the referral for State income tax refund offset and of the opportunity to contest the referral.

(e) *Procedures for contesting offset and for reimbursing excess amounts offset.* (1) The State must establish procedures, which are in full compliance with the State's procedural due process requirements, for an absent parent to use to contest the referral of overdue support for State income tax refund offset.

(2) If the offset amount is found to be in error or to exceed the amount of overdue support, the State IV-D agency must take steps to refund the excess amount in accordance with procedures that include a mechanism for promptly reimbursing the absent parent.

(3) The State must establish procedures for ensuring that in the event of a joint return, the absent parent's spouse can apply for a share of the

refund, if appropriate, in accordance with State law.

(f) *Fee for non-AFDC cases.* In non-AFDC cases, the State may charge a reasonable fee to cover the cost of collecting overdue support using State tax refund offset.

(g) *Distribution of collections.* (1) Within a reasonable time period in accordance with State law, a State must distribute collections received as a result of State income tax refund offset: (i) for an AFDC case under § 302.51(b)(4) and (5) of this chapter, (2) or for a foster care maintenance case under § 302.52(b)(3) and (4) of this chapter; (iii) for a non-AFDC case, by paying offset amounts to the family first or using them first to reimburse the State, depending on the State's method for distributing arrearage collections in non-AFDC cases and must credit amounts offset on individual IV-D payment records.

(2) If the amount collected is in excess of the amounts required to be distributed under paragraph (g)(1) of this section, the IV-D agency must repay the excess to the absent parent whose State income tax refund was offset within a reasonable period in accordance with State law.

(3) The State must credit amounts offset on individual payment records.

(h) *Information to the IV-D agency.* The State agency responsible for processing the State tax refund offset must notify the State IV-D agency of the absent parent's home address and social security number or numbers. The state IV-D agency must provide this information to any other State involved in enforcing the support order.

§ 303.103 Procedures for the imposition of liens against real and personal property.

(a) The State shall have in effect and use procedures which require that a lien will be imposed against the real and personal property of an absent parent who owes overdue support and who resides or owns property in the State.

(b) The State must develop guidelines which are generally available to the public to determine whether the case is inappropriate for application of this procedure.

§ 303.104 Procedures for posting security, bond or guarantee to secure payment of overdue support.

(a) The State shall have in effect and use procedures which require that absent parents post security, bond or give some other guarantee to secure payment of overdue support.

(b) The State must provide advance notice to the absent parent regarding the delinquency of the support payment and the requirement of posting security, bond or guarantee, and inform the absent parent of his or her rights and the methods available for contesting the impending action, in full compliance with the State's procedural due process requirements.

(c) The State must develop guidelines which are generally available to the public to determine whether the case is inappropriate for application of this procedure.

§ 303.105 Procedures for making information available to consumer reporting agencies.

(a) "Consumer reporting agency" means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

(b) For cases in which the amount overdue support exceeds $1,000, the IV-D agency must have in effect procedures to make information available to consumer reporting agencies upon their request regarding the amount of overdue support owed by an absent parent. The procedures must include use of guidelines that are generally available to the public to determine whether application of this procedure is inappropriate in a particular case. In cases in which the overdue support is less than $1,000, these procedures are at the option of the State.

(c) The State IV-D agency may charge the agency a fee not to exceed the actual cost of the State of providing the information under paragraph (b) of this section.

(d) The IV-D agency must provide advance notice to the absent parent who owes the support concerning the proposed release of the information to the consumer reporting agency and must inform the absent parent of the methods available for contesting the accuracy of the information.

(e) The IV-D agency must comply with all of the procedural due process requirements of State law before releasing the information.

R. 1. By revising the introductory text of § 304.20(b), (b)(1), (b)(1)(viii) and (b)(1)(viii)(D) to read as follows:

§ 304.20 Availability and rate of Federal financial participation.

* * * * *

(b) Services and activities for which Federal financial participation will be available shall be those made pursuant to the approved title IV-D State plan which are determined by the Secretary to be necessary expenditures properly attributable to the Child Support Enforcement program, except any expenditure incurred in providing location services to individuals listed in § 302.35(c)(4) of this title, including the following:

(1) The administration of the State Child Support Enforcement program, including but not limited to the following:

* * * * *

(viii) The establishment of agreements with agencies administering the State's title IV-A and IV-E plans in order to establish criteria for:

* * * * *

(D) The procedures to be used to transfer collections from the IV-D agency to the IV-A or IV-E agency before or after the distribution described in § 302.51 or § 302.52, respectively, of this chapter.

R.2. By deleting the phrase "or other officials who make judicial decisions" in § 304.21(b)(2) thru (4) and the phrase "and other officials who make judicial decisions" in § 304.21(b)(5).

S.1. By substituting the phrase "applicable matching rate" for "70 percent rate" wherever it appears in 45 CFR Part 304.

S.2. By adding a new § 304.95 to read as follows:

§ 304.95 State Commissions on Child Support.

(a) As a condition of the State's eligibility for Federal payments under title IV-A or D of the Act for quarters beginning more than 30 days after August 16, 1984, and ending prior to October 1, 1985, the Governor of each State, on or before December 1, 1984, shall appoint a State Commission on Child Support.

(b) Each State Commission appointed under paragraph (a) of this section shall be composed of members appropriately representing all aspects of the child support system, including custodial and non-custodial parents, the IV-D agency, the State judiciary, the executive and legislative branches of the State government, child welfare and social services agencies, and others.

(c) Each State Commission shall examine, investigate and study the operation of the State's child support system for the primary purpose of determining the extent to which such system has been successful in securing support and parental involvement both for children who are eligible for aid under a State IV-A or D plan and for

children who are not eligible for such aid, giving particular attention to such specific problems (among others) as visitation, the establishment of appropriate objective standards for support, the enforcement of interstate obligations, the availability, cost, and effectiveness of services both to children who are eligible for such aid and to children who are not, and the need for additional State or Federal legislation to obtain support for all children.

(d) Each State Commission shall submit to the Governor of the State and make available to the public, no later than October 1, 1985, a full and complete report of its findings and recommendations resulting from the examination, investigation, and study under this section. The Governor shall transmit such report to the Secretary along with the Governor's comments thereon.

(e) None of the costs incurred in the establishment and operation of a State Commission under this section, or incurred by such a Commission in carrying out its functions under paragraphs (c) and (d) of this section, shall be considered as expenditures qualifying for Federal payments under title IV-A and D of the Act or be otherwise payable or reimbursable by the United States or any agency thereof.

(f) A state shall not be required to establish a State Commission under this section and the preceding provisions of this section shall not apply, if the Secretary determines, at the request of any State on the basis of information submitted by the State and such other information as may be available to the Secretary, that such State—

(1) Has placed in effect and is implementing objective standards for the determination and enforcement of child support obligations;

(2) Has established within the five years prior to August 1964 a commission or council with substantially the same functions as the State Commissions provided for under this section; or

(3) Is making satisfactory progress toward fully effective child support enforcement and will continue to do so.

T. By revising § 305.22(a) to read as follows:

§ 305.22 State financial participation.

* * * * *

(a) A State must participate financially by incurring the applicable State share of the program's administrative costs as follows:

FY 1983 through FY 1987—30 percent
FY 1988 and FY 1989—32 percent
FY 1990 and thereafter—34 percent; and

* * * * *

§ 305.28 [Amended]

U. By inserting a comma and the reference "302.52" after the reference "302.51" wherever if appears in § 305.28.

PART 307—[AMENDED]

3. 45 CFR Part 307 is amended as follows:

A. By amending § 307.16 by redesignating the introductory phrase as paragraph (a); paragraphs (a) and (b) as paragraphs (a) (1) and (2); paragraphs (b) (1) through (13) as paragraphs (a)(2) (i) through (xiii); and paragraph (b)(4) (i) through (iv) as paragraphs (a)(2)(iv) (A) through (D); changing the reference to paragraph (b)(1) in the old paragraph (b)(2) to (a)(2)(i); and adding a new paragraph (b) to read as follows:

§ 307.10 Computerized support enforcement programs.

* * * * *

(b) Effective October 1, 1984, a State computerized support enforcement system established under paragraph (a) of this section may facilitate the development and improvement of the income withholding and other procedures required under section 466(a) of the Act and § 302.70 and §§ 303.100 through 303.105 of this chapter through:

(1) The monitoring of support payments;

(2) The maintenance of accurate records of support payments; and

(3) The prompt notice to appropriate officials of any support arrearages.

B. By amending § 307.15 by substituting the phrase "§ 307.10(a)" for "§ 307.10" wherever it appears in paragraph (b)(7) and revising paragraph (a) and paragraphs (b)(2) and (b)(5) to read as follows:

§ 307.15 Approval of advance planning documents for computerized support enforcement systems eligible for 90 percent FFP.

(a) *Approval of an APD.* The Office shall not approve the initial and annually updated APD unless the document, when implemented, will carry out the requirements of § 307.10(a) of this part and the optional provision in § 307.10(b) of this part when elected by the State. Conditions for APD approval are specified in this section.

(b) * * *

(2) The APD must specify how the objectives of the computerized support enforcement system in § 307.10 will be carried out throughout the State; this includes a projection of how the proposed system will meet the functional requirements of § 307.10(a) and the functional requirements of § 307.10(b) when elected by the State and how the system will encompass all political subdivisions in the State within a reasonable period of time;

* * * * *

(5) The APD must contain a description of each component within the proposed computerized support enforcement system as required by § 307.10(a) and the optional component of § 307.10(b) when elected by the State and must describe information flows, input data, and output reports and uses;

* * * * *

C. By amending § 307.25 by revising paragraph (b) to read as follows. The introductory text of the section is shown for the convenience of the reader and contains no changes.

§ 307.25 Review of computerized support enforcement systems eligible for 90 percent FFP.

The Office will on a continuous basis review, assess and inspect the planning, design, development, installation, enhancement and operation of computerized support enforcement systems developed under § 307.10 of this part to determine the extent to which such systems:

* * * * *

(b) Meet the conditions in § 307.10(a) and the optional provision of § 307.10(b) when elected by the State.

D. By amending § 307.30: (1) by revising paragraphs (a)(2) and (b) to read as follows, and (2) by revising paragraph (c) to delete the cross reference to 45 CFR 95.617 as set forth below.

§ 307.30 Federal financial participation at the 90 percent rate for computerized support enforcement systems.

(a) * * *

(2) The Office determines:

(i) The system meets the requirements specified in § 307.10(a); or

(ii) The system meets the requirements specified in § 307.10(a) and the optional provisions in § 307.10(b).

* * * * *

(b) Reimbursement of hardware and proprietary software.

(1) Effective October 1, 1984, FFP at the 90 percent rate is available in expenditures for the rental or purchase of hardware for the planning, design, development, installation, enhancement or operation of a computerized support enforcement system as described in § 307.10 (a) or § 307.10 (a) and (b).

(2) Effective October 1, 1984, FFP at the 90 percent rate is available in expenditures for the rental or purchase of proprietary operating/vendor software necessary for the operation of hardware during the planning, design, development, installation, enhancement

or operation of a computerized support enforcement system in accordance with the Computerized Support Enforcement System (CSES) Guide for enhanced FFP. FFP at the 90 percent rate is not available for proprietary application software developed specifically for a computerized support enforcement system. (See § 307.35 of this part regarding reimbursement at the applicable matching rate.)

(c) *HHS rights to software.* The Department of Health and Human Services reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use for Federal government purposes, software, software modifications, and documentation developed under § 307.10. This license would permit the Department to authorize the use of software, software modifications and documentation developed under § 307.10 in another project or activity funded by the Federal government.

E. By amending § 307.35 by revising the title, the introductory text, and paragraph (a) to read as follows:

§ 307.35 Federal financial participation at the applicable matching rate for computerized support enforcement systems.

Federal financial participation at the applicable matching rate is available only in computerized support enforcement systems expenditures for:

(a) The operation of a system that meets the requirements specified in § 307.10(a) of this part and the optional provision of § 370.10(b) when elected by the State if the conditions for ADP approval in § 307.15 of this part are met; or

* * * * *

F. By substituting the phrase "applicable matching rate" for "70 percent rate" wherever it appears in Part 307.

(Catalog of Federal Domestic Assistance Program No. 13.679, Child Support Enforcement Program)

Dated: February 27, 1985.

R. Stephen Ritchie,

Director, Office of Child Support Enforcement.

Approved: March 22, 1985.

Margaret M. Heckler,

Secretary.

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