

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Child Support Enforcement

45 CFR Part 309

RIN 0970-AB73

Tribal Child Support Enforcement Programs

AGENCY: Office of Child Support Enforcement (OCSE), Administration for Children and Families, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Administration for Children and Families (ACF) is issuing this notice of proposed rulemaking (NPRM) to implement direct funding to Indian Tribes and Tribal organizations under section 455(f) of the Social Security Act (the Act) as added by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104-193), and amended by section 5546 of the Balanced Budget Act of 1997 (Public Law 105-33). Section 455(f) of the Act authorizes direct funding of Tribal Child Support Enforcement (CSE) programs meeting requirements contained in the statute and established by the Secretary by regulation. These proposed regulations address these requirements and related provisions, provide guidance to Tribes and Tribal organizations on how to apply for and, upon approval, receive direct funding for the operation of Tribal CSE programs.

A separate interim final rule for comprehensive Tribal CSE programs is published concurrently with this NPRM in this **Federal Register**. The interim final rule enables Tribes and Tribal organizations currently operating a comprehensive Tribal CSE program directly or through agreement, resolution, or contract, to apply for and receive direct Tribal CSE funding.

DATES: Consideration will be given to written comments received by December 19, 2000, and to comments made for the record at public consultations to be held by OCSE during the 120-day comment period.

ADDRESSES: Written comments should be submitted to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services, 370 L'Enfant Promenade, SW, Washington, DC 20447, Attention: Director, Division of Policy and Planning, Mail Stop: OCSE/DPP. Written comments also may be submitted at the OCSE public consultations to be held during the comment period.

You may also transmit written comments electronically via the Internet. To transmit comments electronically, or download an electronic version of the rule, you should access the Administration for Children and Families Welfare Reform home page at "<http://www.acf.dhhs.gov/hypernews/>" and follow any instructions provided. You may also submit comments by telefaxing to (202) 401-3444. This is not a toll-free number.

Comments will be available for public inspection Monday through Friday, 8:30 a.m. to 5 p.m., on the 4th floor of the Department's offices at 370 L'Enfant Promenade, SW, Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: Tribal Child Support Enforcement Program, (202) 205-4554, or OCSE Division of Policy and Planning, (202) 401-9386.

Deaf and hearing-impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 from Monday through Friday between the hours of 8 a.m. and 7 p.m., Eastern Time.

SUPPLEMENTARY INFORMATION:

Comments on Proposed Rule

Comments should be specific, address issues raised by the proposed rule, propose alternatives where appropriate, explain reasons for any objections or recommended changes, and reference the specific section of the proposed rule that is being addressed.

We will not acknowledge receipt of the comments we receive. However, we will review and consider all comments that are germane and received during the comment period.

In the interest of providing Tribes with adequate time to review and comment on this notice of proposed rulemaking, we modified the standard 60-day comment period and allow for 120 days. This is consistent with the extended 120-day comment period following the July 22, 1998 publication of the Notice of Proposed Rulemaking for the Tribal Temporary Assistance for Needy Families Program (Tribal TANF) and Native Employment Works (NEW) Program (63 FR 39366).

Public Consultations

To obtain the broadest public participation possible on these proposed rules, OCSE plans to conduct three public consultations during the comment period. These consultations also are intended to further solicit Tribal input on the Tribal Child Support Enforcement Program, as mandated by Presidential Executive Memoranda on April 29, 1994, and May 14, 1998.

We plan to publish a separate notice with the specific locations, dates, and times of these consultations, and to mail notices to all Federally recognized Indian Tribes and State IV-D agencies. Further information regarding these consultations, including last-minute changes, will be available from the OCSE internet site (at "www.acf.dhhs.gov/programs/cse/"), and from OCSE's contractor for the consultations.

At the consultations, Federal officials will explain and answer questions to clarify the proposed rules. Persons who attend the consultations may make oral presentations and/or provide written comments for the record at the consultations, at their option. They also may submit written comments to OCSE as explained earlier in this preamble, at their option. We encourage persons who make oral presentations at the consultations to submit written comments in support of their presentations.

We encourage any person who wishes to make an oral presentation on these proposed rules at any of the consultations to preregister before or at the consultation. We will provide specific information on preregistration in the separate notice to be published on these consultations. At the time of preregistration, identifying information about prospective presenters will be recorded, such as name, organization (if any), address, and telephone number, so that presenters can be accurately identified and properly introduced at the consultations. Persons who preregistered will make their presentations first; then, as time allows, persons who did not preregister will make their presentations. Presentations must be about the proposed rule, should be specific, and should include specific recommendations for changes where appropriate. In fairness to other participants, presentations should be concise and will be limited to a maximum of 10 minutes each. To clarify presentations, we may ask questions. Presentations will be recorded and included in the public record of comments on the proposed rules, unless a commenter does not want his or her comments to be on the record.

At the consultations, we cannot address participants' concerns regarding the proposed rules, or respond to questions about the proposed rules other than questions asking for clarification. Instead, we will consider comments and recommendations provided at the consultations, and written comments and recommendations submitted as described earlier in this preamble, as we

prepare the final version of these regulations.

Statutory Authority

These proposed regulations implement section 455(f) of the Social Security Act (the Act), as added by the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA; Pub. L. 104-193) and amended by section 5546 of the Balanced Budget Act of 1997 (Pub. L. 105-33).

This proposed regulation is also issued under the authority granted to the Secretary of Health and Human Services (Secretary) by section 1102 of the Act, 42 U.S.C. 1302. Section 1102 of the Act authorizes the Secretary to publish regulations that may be necessary for the efficient administration of the functions for which the Secretary is responsible under the Act.

Section 455(f) of the Act, as amended by Public Law 105-33, reads as follows: "The Secretary may make direct payments under this part to an Indian tribe or tribal organization that demonstrates to the satisfaction of the Secretary that it has the capacity to operate a child support enforcement program meeting the objectives of this part, including establishment of paternity, establishment, modification, and enforcement of support orders, and location of absent parents. The Secretary shall promulgate regulations establishing the requirements which must be met by an Indian tribe or tribal organization to be eligible for a grant under this subsection."

Public Law 102-477 and Public Law 93-638

Public Law 102-477, the Indian Employment, Training and Related Services Demonstration Act of 1992, established a demonstration program

under which Indian Tribes may integrate program services and consolidate administrative functions under Federally funded programs they administer for employment, job training, and related services. Child support enforcement is not an employment, job training, or related services program. Therefore, child support funds may not be included as part of a Tribal plan under Public Law 102-477, and Tribes must request child support funds directly from ACF.

Public Law 93-638, the Indian Self-Determination and Education Assistance Act, authorizes self-determination contracts under which Indian Tribes may plan, conduct, and administer certain programs and services that are provided by the Federal government for the benefit of Indians because of their status as Indians. It also authorizes self-governance compacts and funding agreements under which Tribes may plan, conduct, consolidate, and administer programs, services, and functions of the Department of the Interior and the Indian Health Service that are otherwise available to Indian Tribes or Indians. Child support enforcement is not among the programs and services that may be contracted or compacted pursuant to Public Law 93-638. Child support enforcement is not a program or service provided by the Federal government for Indians because of their status as Indians. Nor is it a program, service, or function of the Department of the Interior or the Indian Health Service.

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (Public Law 104-13), all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or recordkeeping requirements

inherent in a proposed or final rule. Interested parties may comment to OMB on these requirements as described below. This NPRM contains reporting requirements at proposed 45 CFR part 309, and the interim final rule for comprehensive Tribal CSE programs contains reporting requirements at 45 CFR part 310. The Department has submitted these reporting requirements to OMB for its review.

Proposed part 309 and part 310 contain a regulatory requirement that, in order to receive funding for an independent Tribal CSE program, a Tribe or Tribal organization must submit an application containing standard forms 424 and 424A and a plan describing how the Tribe or Tribal organization meets or plans to meet the objectives of section 455(f) of the Act, including establishing paternity, establishing, modifying, and enforcing support orders, and locating noncustodial parents. Tribes and Tribal organizations must respond if they wish to operate a Federally funded program. In addition, any Tribe or Tribal organization participating in the program would be required to submit standard form 269 and form OCSE 34A and to submit statistical and narrative reports regarding its Tribal CSE program. The potential respondents to these information collection requirements are approximately 10 Federally recognized Tribes, and Tribal organizations, during Year 1; 65 additional Federally recognized Tribes and Tribal organizations during Year 2; and 75 additional Federally recognized Tribes and Tribal organizations during Year 3; for a three year total of 150 grantees. This information collection requirement will impose the estimated total annual burden on the Tribes and Tribal organizations described in the table below:

Information collection	Number of respondents	Responses per respondent	Average burden per response	Total Annual Burden
Year 1:				
SF 424	10	1	0.75	7.5
SF 424A	10	1	3	30
SF 269	10	5	2	100
45 CFR 309—Plan	10	1	480	4,800
Form OCSE 34A	10	4	8	320
Statistical Reporting	10	1	24	240
Total	5,497.5
Year 2:				
SF 424	75	1	.75	56.25
SF 424A	75	1	3	225
SF 269	75	5	2	750
45 CFR 309—Plan	65	1	480	31,200
Form OCSE 34A	75	4	8	2,400

Information collection	Number of respondents	Responses per respondent	Average burden per response	Total Annual Burden
Statistical Reporting	75	1	24	1,800
Total				36,431.25
Year 3:				
SF 424	150	1	.75	112.5
SF 424A	150	1	3	450
SF 269	150	5	2	1,500
45 CFR 309—Plan	75	1	480	36,000
Form OCSE 34A	150	4	8	4,800
Statistical Reporting	150	1	24	3,600
Total				46,462.5

Total Burden for 3 Years: 88,391.25.
 Total Annual Burden Averaged over 3 Years: 29,463.75 per year.

The Administration for Children and Families will consider comments by the public on this proposed collection of information in the following areas:

- Evaluating whether the proposed collection is necessary for the proper performance of the functions of ACF, including whether the information will have practical utility;
- Evaluating the accuracy of ACF’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technology, *e.g.*, permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these regulations between 30 and 60 days after their publication in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations. Written comments to OMB for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW, Washington DC 20503, Attn: Ms. Wendy Taylor, Desk Officer for ACF.

Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), 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 because the primary impact of these

regulations is on Tribal governments. Tribal governments are not considered small entities under the Act.

Executive Order 12866

Executive Order 12866 requires that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this proposed rule is consistent with these priorities and principles. The proposed regulations are required by PRWORA and represent the proposed regulations governing direct funding to Tribal CSE agencies that demonstrate the capacity to operate a CSE program, including establishment of paternity, establishment, modification and enforcement of support orders, and location of noncustodial parents.

The Executive Order encourages agencies, as appropriate, to provide the public with meaningful participation in the regulatory process. As described elsewhere in the preamble, ACF consulted with Tribes and Tribal organizations and their representatives to obtain their views prior to the publication of this NPRM.

Unfunded Mandates

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, (Unfunded Mandates Act) requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by State, local and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a covered agency must prepare a budgetary impact statement, section 205 further requires that it select the most cost-effective and least burdensome alternative that achieves the objectives of the rules and is consistent with the statutory

requirements. In addition, section 203 requires a plan for informing and advising any small government that may be significantly or uniquely impacted by the proposed rule.

We have determined that the proposed rule is not an economically significant rule and will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than \$100 million in any one year. The following are estimated annual expenditures under the Tribal CSE Program: FY 2000–\$0; FY 2001–\$4.3 million; FY 2002–\$17.6 million; FY 2003–\$34.8 million; FY 2004–\$44.8 million; FY 2005–\$49.2 million. Accordingly, we have not prepared a budgetary impact statement, specifically addressed the regulatory alternatives considered, or prepared a plan for informing and advising any significantly or uniquely impacted small government.

Congressional Review

This proposed rule is not a major rule as defined in 5 U.S.C., Chapter 8.

Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a proposed policy or regulation may affect family well-being. If the agency’s conclusion is affirmative, then the agency must prepare an impact assessment addressing criteria specified in the law. We have determined that this proposed regulation may affect family well-being as defined in section 654 of the law and certify that we have made the required impact assessment. The purpose of the Tribal Child Support Enforcement Program is to strengthen the economic and social stability of families. This proposed rule gives flexibility to Tribes and Tribal

organizations to design programs that serve this purpose. The rule will have a positive effect on family well-being. Implementation of Tribal CSE programs will result in increased child support enforcement services, including increased child support payments, for Tribal service populations. By helping to ensure that parents support their children, the rule will strengthen personal responsibility and increase disposable family income.

Executive Order 13132

Executive Order 13132 on Federalism applies to policies that have federalism implications, defined as "regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distributions of power and responsibilities among the various levels of government." This rule does not have federalism implications for State or local governments as defined in the Executive Order.

Background

The Child Support Enforcement Program was established in 1975 under title IV-D of the Social Security Act as a joint Federal/State partnership. The goal of the Child Support Enforcement Program (also known as the title IV-D program) is to ensure that both parents financially support their children. The IV-D program locates noncustodial parents, establishes paternity, establishes and enforces support orders, and collects child support payments from parents who are legally obligated to pay.

The United States Constitution recognizes all treaties made under the authority of the United States, including treaties with Indian Tribes, as the "supreme Law of the Land." The Constitution, Federal law, and court decisions establish Indian affairs as a unique area of Federal concern. The United States pledges in treaties to protect Indian Tribes, thereby establishing one of the bases for the Federal trust responsibility and the government-to-government relationship with Indian Tribes. These fundamental principles continue to guide national policy towards Indian Tribes. The Federal policy to support and strengthen Tribes' right to self-determination has been firmly established and reaffirmed by every U.S. President for more than thirty years.

On April 29, 1994, at a historic meeting with the heads of Tribal governments, President Clinton reaffirmed the United States' "unique

legal relationship with Native American tribal governments as set forth in the Constitution of the United States, treaties, statutes, and court decisions" and issued a memorandum to all executive departments and agencies of the Federal Government, stating that: "As executive departments and agencies undertake activities affecting Native American tribal rights or trust resources, such activities should be implemented in a knowledgeable, sensitive manner respectful of tribal sovereignty."

The President's memorandum requires that in all activities relating to or affecting the government or treaty rights of Indian Tribes, the executive branch shall:

(1) Operate within a government-to-government relationship with Federally recognized Indian Tribes;

(2) Consult, to the greatest extent practicable and to the extent permitted by law, with Indian Tribal governments before taking actions that affect Federally recognized Indian Tribes;

(3) Assess the impact of agency activities on Tribal trust resources and assure that Tribal interests are considered before the activities are undertaken;

(4) Remove procedural impediments to working directly with Tribal governments on activities that affect trust property or governmental rights of the Tribes; and

(5) Work cooperatively with other agencies to accomplish these goals established by the President.

The Department and the Office of Child Support Enforcement are committed to carrying out the letter and spirit of this directive in the promulgation of regulations establishing the requirements which must be met by Tribes and Tribal organizations to be eligible for direct funding and in all dealings with Tribes.

Tribal Child Support Enforcement

Prior to enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), title IV-D of the Act placed authority to administer the delivery of IV-D services solely with the States. However, on most Indian reservations, the authority of State and local governments is limited or non-existent. The Constitution, numerous court decisions, and Federal law clearly reserve to Indian Tribes important powers of self-government, including the authority to make and enforce laws, to adjudicate civil and criminal disputes (including domestic relations cases), to tax, and to license. Consequently, States which have attempted to provide IV-D services on Tribal lands have generally been

constrained in their abilities to establish paternity and establish and enforce child support orders. Cooperative agreements between Tribes and States have helped bring child support services to some reservations.

Prior to enactment of PRWORA, Federal funding under title IV-D of the Act was limited to funding State child support enforcement programs and there was no direct Federal funding to Tribes for child support enforcement activities. Federal funding was available, through the State, for eligible expenditures of a Tribe pursuant to a cooperative agreement with the State, under which the State delegated functions of the IV-D program to the Tribal entity. The Tribal entity was required to comply with all aspects of title IV-D of the Act applicable to the function or functions delegated to the Tribe. Only under these circumstances was Federal reimbursement under title IV-D available to the State for costs incurred by the Tribal entity for performing IV-D functions.

For the first time in the history of the program, PRWORA provided authority under title IV-D of the Act for direct funding of Tribes and Tribal organizations for operating child support enforcement programs. Section 455(f) of the Act provides, "The Secretary may make direct payments under this part to an Indian tribe or tribal organization that demonstrates to the satisfaction of the Secretary that it has the capacity to operate a child support enforcement program meeting the objectives of this part, including establishment of paternity, establishment, modification, and enforcement of support orders, and location of absent parents. The Secretary shall promulgate regulations establishing the requirements which must be met by an Indian tribe or tribal organization to be eligible for a grant under this subsection." The Department of Health and Human Services (HHS) recognizes the unique relationship between the Federal Government and Federally recognized Indian Tribes and reflects this special government-to-government relationship in the implementation of the Tribal provisions of PRWORA. The direct Federal funding provisions provide Tribes with an opportunity to design their own child support programs to meet the needs of the Tribes' children and their families.

Tribes may exercise their right to self-determination by deciding whether or not to operate a Tribal CSE program. Tribes which choose to administer a Tribal CSE program meeting the objectives of title IV-D of the Social Security Act will have considerable

flexibility to develop and administer programs consistent with Tribal laws and traditions. In this NPRM we have set forth regulations that allow for accommodation for unique Tribal situations in many circumstances. However, we believe there must be some degree of comparability among the Tribal and State IV-D programs in the nationwide child support enforcement program.

Title IV-D gives the Secretary broad and exclusive authority to establish duties and responsibilities of Tribes and Tribal organizations in the operation of Tribal CSE programs and which meet the objectives of title IV-D. While section 455(f) particularly names establishment of paternity, establishment, modification and enforcement of support orders, and location of absent parents as objectives of title IV-D, this is a non-exclusive list. Title IV-D, as amended, was enacted by Congress "for the purpose of enforcing the support obligations owed by noncustodial parents to their children * * * and assuring that assistance in obtaining support will be available under (IV-D) to all children (whether or not eligible for assistance for aid under part A) for whom such assistance is requested. * * *" See S. Rep. No. 1356, 93rd Cong., 2d Sess. (1974) and S. Rep. No. 387, 98th Cong., 2d Sess. (1984). We interpret the purpose or objectives of title IV-D in a manner that includes Indian children in the class of individuals for whom assistance in obtaining support is available under the Act and believe that section 455(f) must be read in a manner that is consistent with this interpretation. Exercise of the Secretary's broad authority under title IV-D to establish duties and responsibilities of Tribes and Tribal organizations in the operation of Tribal CSE programs is an essential part of the coordinated Federal-State-Tribal effort to ensure that absent parents support their children. Therefore, we believe that all IV-D programs must have in common a minimum set of fundamental characteristics to ensure that the objectives of title IV-D are implemented. This proposed rule sets forth the requirements that must be met in order for a Tribe or Tribal organization to receive direct funding for such IV-D programs.

Alternatively, if a Tribal entity chooses not to undertake responsibility for operation of a IV-D program, section 454(33) of the Act provides that State IV-D agencies may negotiate cooperative agreements with a Tribe to ensure Tribal children and families receive much-needed support services. Under section 454(33) cooperative

agreements, the funding relationship is between the State and the Federal government.

As a result of PRWORA, title IV-D of the Act recognizes a number of ways in which IV-D services may be provided on Tribal lands:

- A State and Tribe or Tribal organization under a State IV-D program provide for the cooperative delivery of child support enforcement services in Indian country pursuant to a cooperative agreement under section 454(33) of the Act.

- A State or local IV-D agency provides child support enforcement services on Tribal lands pursuant to an agreement under which the Tribe agrees to recognize the State or county jurisdiction on Tribal lands for the specific purpose of child support enforcement.

- A State provides child support enforcement services on Tribal lands because it has jurisdiction in Indian country that is lawfully exercised under Public Law 83-280. Since Public Law 83-280 delegated Federal jurisdiction to some States, the jurisdiction of tribal courts remains concurrent with the States to the same extent that it was concurrent with the Federal government prior to enactment of the law. As a result of the Indian Civil Rights Act of 1968 (25 U.S.C. 1301-03), a Tribe must consent to any additional assumptions of State Public Law 83-280 jurisdiction after enactment of this statute. To the extent that State jurisdiction is lawfully exercised within Indian country, such civil grant of authority is for adjudicatory jurisdiction only.

- A State and Tribe or Tribal organization under a State IV-D program provide for the delivery of child support enforcement services in Indian country pursuant to a cooperative agreement in effect prior to August 22, 1996, the date of enactment of PRWORA.

- A Tribe or Tribal organization operates a child support enforcement program that meets the requirements for such a program established by the Secretary in regulations promulgated pursuant to section 455(f) of the Act.

This regulation addresses *only* Tribal CSE program requirements for direct funding under section 455(f) of the Act.

Consultation Process

The Administration for Children and Families and the Department of Health and Human Services are committed to consulting with Indian Tribes on a government-to-government basis. In compliance with the mandate to promulgate regulations for direct funding of Tribal CSE programs, in 1998 the Federal Office of Child Support

Enforcement, Native American Program (OCSE-NAP), conducted a series of six Nation-to-Nation consultations with Indian Tribes, Tribal organizations and other interested parties with the goal of obtaining Tribal input prior to publishing the NPRM for direct funding for Tribal CSE programs. In response to Tribal concerns, the consultations were conducted to obtain maximum Tribal input, as mandated by Presidential Executive Memoranda of April 29, 1994, and May 14, 1998, before proposed regulations were drafted.

The consultations were designed to solicit Tribal input *prior to* the drafting of any Federal regulations for direct funding to Tribes and Tribal organizations to operate their own child support enforcement programs. The consultations were held across the country to allow for greater opportunity for Tribal participation. The consultation sites were Albuquerque, New Mexico; Portland, Oregon; Nashville, Tennessee; Fairbanks, Alaska; Washington, DC; and Prior Lake, Minnesota on the Shakopee Indian reservation. In addition, a toll free "800" number was created to allow for additional comments and input by Tribes and Tribal organizations. After the consultation process ended, OCSE solicited further input from individual participants from the previous consultations who had expressed an interest in helping OCSE to understand the issues raised during the consultation process.

Each of the consultations lasted for 2½ days and comprised two distinct parts. The first part was an overview of the National Child Support Enforcement Program. This session was designed to provide participants with basic information about child support enforcement so that they would be better informed for the actual consultations. This portion of the consultation consisted largely of information sharing by Federal OCSE staff. It was designed for those new to the Tribal child support enforcement arena as well as those who needed additional background information about paternity establishment and child support enforcement. In addition, this first portion of the consultation doubled as informal training for Tribal child support enforcement staff.

The second and longer part of the consultation was devoted to Federal staff listening to Tribal input regarding the regulations. OCSE used neutral Native American facilitators to help focus the discussion, to leave Federal officials free to listen, and to help draw input and questions from all participants.

In order to effectively coordinate the six consultations and obtain Tribal input, OCSE utilized American Indian experts in the field of child support enforcement from three perspectives. These perspectives were divided into three distinct tracks: Tribal leadership, legal, and social work. The use of the three distinct tracks was the most effective means of reaching the various Tribal constituencies, as it allowed participants to focus in the areas of most interest to them.

The Tribal leadership track addressed the questions and concerns of Tribal leadership with specific attention being paid to the implementation of the Tribal CSE provisions and satisfaction of the requirements for the Secretary to issue regulations. The options and choices of Tribal governments regarding Tribal CSE program implementation were the primary topics of discussion.

The legal track addressed specific areas of legal concern that Tribes had regarding the Tribal CSE regulations. In the legal track, the concerns and questions of Tribal attorneys, Tribal court judges, and those associated with the legal aspect of the welfare reform law were addressed. Legal specialists in Tribal child support enforcement were utilized to present the Tribal CSE information.

The social worker/practitioner track addressed the questions and concerns of Tribal staff who would be implementing the Tribal CSE provisions of PRWORA. This track focused upon the types of issues and situations that may confront front-line Tribal CSE workers before, during, and after the implementation of the options available under the Tribal CSE provisions of PRWORA. In addition, Tribal CSE workers' suggestions and recommendations to improve the implementation of Tribal CSE programs were elicited and discussed.

A general session allowed Tribes the opportunity to present their concerns and ask questions about the consultation process. Tribes made very clear that they desired the opportunity to present their concerns and questions in an unfettered fashion to Federal officials. This final session allowed participants the opportunity to review, discuss, and summarize their input into the Tribal CSE regulations. The three facilitators conducted presentations so that all participants and Federal officials could hear concerns raised in each track. This was followed by a general discussion by all participants that allowed additional comments and concerns to be addressed and brought to the attention of Federal officials.

Tribal Issues of Concern

The consultations were successful in eliciting a wide range of questions, issues, concerns, and suggestions. We have worked to ensure that information and concerns raised in the consultations were shared with both staff working on individual regulatory issues and key policymakers. The government-to-government consultations were very useful in identifying key issues and evaluating policy options. Several issues were repeatedly raised during the consultations, and they are summarized below.

1. Sovereignty

One of the primary issues of concern was that of Tribal sovereignty. Federally recognized Indian Tribes have a unique government-to-government relationship with the Federal government and want to ensure that nothing is done to threaten or lessen their status.

We recognize the status of Tribes and have attempted to convey flexibility and recognition of the status of Tribes in the proposed rule. The regulation recognizes the relationship by supporting:

- Tribes' right to design child support programs that reflect their laws, traditions, and custom, consistent with Federal law and regulations.
- Tribes' right to exercise self-determination and decide whether or not to operate a Tribal CSE program.
- The direct funding relationship between Tribes and the Federal government.

2. Jurisdiction

Tribes are very concerned about jurisdictional issues involved in the enforcement of Tribal CSE. Some of these issues are concurrent jurisdiction, court order modifications, collections from other jurisdictions, jurisdiction under Public Law 83-280 (commonly referred to as Public Law 280), jurisdiction between a Tribe and States, and jurisdictional issues between Indian Tribes. Participants raised questions about the role of the Indian Child Welfare Act. They also raised concerns about the need to clearly define the recipients of Tribal CSE program services.

The proposed regulations do not address the issue of jurisdiction. Fundamentally, the jurisdiction of a Tribal CSE program will be determined by Tribal law and the jurisdiction of the Tribe's courts or administrative process, and by applicable Federal law (as in the case of Public Law 280 States and Tribes). In practice a Tribe's CSE "service area" will be determined by the

jurisdiction of its courts or administrative process.

3. Full Faith and Credit

Tribes are concerned with the application and impact of the Federal Full Faith and Credit for Child Support Orders Act (28 U.S.C. 1738B) on their child support enforcement cases and orders. Will this law erode Tribal sovereignty? Will States or other Tribal courts give full faith and credit to a Tribe's judgment or Tribal CSE orders? Must Tribes give full faith and credit to States and other Tribal CSE orders and judgments? Will Tribes have any ability to adjust or abrogate large arrearages accrued by a Tribal member under a State child support order? Will Tribal courts be able to adjust the current amount of such a State order to reflect the level of income and earnings potential of Tribal members? Will there be reciprocity of enforcement of Tribal decrees and State decrees in courts?

In order for child support enforcement to succeed in Indian country, it is important for State and Tribal governments to work together. We remind States that Tribes have a right under law to operate their own programs. States should cooperate in giving full faith and credit for Tribal child support orders. Likewise, Tribes should cooperate with States in giving full faith and credit for State child support orders.

The Full Faith and Credit for Child Support Orders Act (28 U.S.C. 1738B(b)) defines "State" to include "Indian country (as defined in section 1151 of title 18)." This means that throughout the Full Faith and Credit for Child Support Orders Act provisions, wherever the term "State" appears it must be read to include "Tribe" as well. The Full Faith and Credit for Child Support Orders Act defines "child support order" to be "a judgement, decree, or order of a court requiring the payment of child support in periodic amounts or in a lump sum," and "court" to mean a "court or administrative agency of a State that is authorized by State law to establish the amount of child support payable by a contestant or make a modification of a child support order."

Section 1738B(c) of the Full Faith and Credit for Child Support Orders Act states that "A child support order made by a court of a State is made consistently with this section if—

- (1) A court that makes the order, pursuant to the laws of the State in which the court is located and subsections (e), (f), and (g)—

(A) Has subject matter jurisdiction to hear the matter and enter such an order; and

(B) Has personal jurisdiction over the contestants; and

(2) Reasonable notice and opportunity to be heard is given to the contestants.”

Section 1738B(a) of the Full Faith and Credit for Child Support Orders Act requires “the appropriate authorities of each State” to “enforce according to its terms a child support order made consistently with this section by a court of another State. * * *” We believe that this means that where a Tribal court or administrative agency makes a child support order that is consistent with 28 U.S.C. 1738B(c), that order must be enforced by the State and where a State court or administrative agency makes a child support order that is consistent with 28 U.S.C. 1738B(c), that order must be enforced by the Tribe.

In the situation where a Tribal court or administrative agency establishes a child support order consistent with 28 U.S.C. 1738B(c) and subsequently the obligor Tribal member moves off-reservation, the Tribe would lose jurisdiction over that Tribal member, but States would have to enforce that Tribal child support order according to its terms the same as they would have to enforce a valid child support order from any other State.

In the situation where a State court or administrative agency establishes a child support order consistent with 28 U.S.C. 1738B(c) and subsequently the obligor Tribal member moves on-reservation, the Tribe, under 28 U.S.C. 1738B(a), would have to enforce that State child support order according to its terms.

While Tribes cannot adjust State orders retroactively or reduce arrearages owed under State orders, there are ways to ensure support is set based on an individual's ability to pay. Tribes can set orders based on guidelines and ability to pay. A State could accept less than the full payment of arrearages assigned to the State on the same grounds that exist for compromise and settlement of any other judgment in the State. However, under the terms of FFCCSOA, a Tribe or Tribal organization may not modify a child support order issued by a State if such order complies with 28 U.S.C. 1738B(c) unless the issuing State no longer has continuing, exclusive jurisdiction and the Tribe has proper jurisdiction to issue orders or the parties file written consent to the modification. If no party or the child reside in the issuing State, the Indian Tribe may modify and enforce the order by registering that order with the State with jurisdiction

over the non-moving party. In the absence of assignment, child support arrears may only be compromised by an agreement between the obligee and obligor. We encourage States and Tribes to work together on this and other issues.

4. Access to Federal Processes, Privacy Concerns and Computer Systems

Tribes want to know if they will be able to access the Federal Parent Locator Service (FPLS) and the Federal Income Tax Refund Offset Program. They also desire to set up their own CSE computer systems. Tribes have privacy concerns relating to data collected by Tribes on their members, which they do not want made public.

Tribes may access the FPLS through either a State Parent Locator Service or by a secured electronic means in accordance with instructions issued by the Secretary. We are soliciting comments, in another section of this preamble, on the development of options for direct Tribal access to FPLS. We are also coordinating with the IRS to determine the extent to which Tribes may have access to tax return information for locate and enforcement purposes.

The Internal Revenue Code does not provide direct access by Tribes to the Federal Income Tax Refund Offset process. However, Tribes and Tribal organizations may access the Federal Income Tax Refund Offset Program by submittal through State IV-D offices. This issue is addressed in more detail in a later section of the preamble.

Under these proposed rules, the reasonable and allowable costs of developing and operating Tribal CSE computer systems are eligible for Federal funding under an approved Tribal CSE program. We agree that the nature of child support data is highly confidential and, therefore, the proposed rule incorporates strict safeguarding requirements.

5. Paternity

There are Tribal concerns surrounding the establishment of paternity by Tribal tradition versus genetic testing. There are also privacy concerns regarding access to data obtained from any genetic testing. Will States honor Tribal paternity judgments based on Tribal law, code, tradition, and custom?

The proposed rule recognizes the unique nature of Tribal law and tradition and seeks to ensure that Tribal tradition, customs and practices are honored. Establishment of paternity for child support purposes does not automatically enroll minor children into

Tribes. Each Tribe has codes that address Tribal membership requirements. Tribes will continue to determine membership in accordance with their enrollment criteria. Privacy, as addressed previously, is crucial to the success of the program and the protection of individual rights, both Indian and non-Indian alike.

We believe that under the State-enacted Uniform Interstate Family Support Act (UIFSA) statutes and the Full Faith and Credit for Child Support Orders Act, States are required to honor Tribal child support orders based on paternity establishment pursuant to Tribal law, in the same manner that a Tribe is compelled to honor a State child support order based on a State's determination of paternity.

6. Funding

A significant concern is how Tribes will be funded to operate Tribal CSE programs. Will grants to Tribes be funded at the 100 percent level? Will Tribes have lump sum payments and access to incentives? Will the funding mechanism afford all Tribes a reasonable base amount? Can there be privatization of services under funding? Do Tribes have to negotiate their funding level with States? Is there a match requirement? How much money will be available for Tribal CSE programs?

Under this proposed rule, funding will be awarded for 90 percent of the total amount of estimated and approved costs necessary for a Tribe or Tribal organization to operate an approved Tribal CSE program for the first three years of operation of a full Tribal CSE program under § 309.65(a). We are proposing a 10 percent non-Federal match in cash and/or in kind from Tribes and Tribal organizations, with provisions for waiver of this matching requirement for Tribes and Tribal organizations that lack sufficient resources. After a Tribe has operated a full CSE program for three years at the 90 percent match rate (not including any period of start-up funding), the Tribe's match would be increased to 20 percent and the Federal matching rate would be reduced to 80 percent. However, within five years of publication of the final rule, if the Secretary determines based on experience gained through operation of child support Tribal programs and consultation with Tribes that the 80/20 match rate is disruptive to the program and imposes hardship to Tribes, the regulations will be revised accordingly.

While this level of Federal matching is higher than the current 66 percent matching rate available to States for

most title IV–D activities, it is akin to the higher Federal financial support States received in the early years of their programs. At that time the combination of Federal matching and incentive payments supported about 93 percent of a State’s IV–D expenditures.

See proposed regulations at Subpart D—Tribal CSE Program Funding, for a discussion on the proposed match and how funding will be made available. The proposed regulation allows for start-up costs and explicitly allows Tribes and Tribal organizations full flexibility to operate all or part of their programs and to contract with other entities—*e.g.*, other Tribes, States, private organizations—to operate other portions of the program. Any combination is acceptable provided all requirements of the regulations and statute are met.

7. Existing Cooperative Agreements

How will existing cooperative agreements be affected? Can Tribes reach new cooperative agreements? Can old cooperative agreements be amended?

Indian Tribes operating directly funded Tribal CSE programs will find that the nature of their relationships with States has changed. For many Tribes, direct funding under section 455(f) will effectively replace or supersede their cooperative agreements with States. Tribes operating Tribal CSE programs under section 455(f) may obtain services from other entities, including States, through contracts or cooperative agreements. However, in this context, “cooperative agreements” has a different meaning than under section 454(33). Cooperative agreements reached in these situations, *i.e.*, under section 455(f), will be for the purpose of a Tribe’s obtaining services for its program from another source, rather than providing services under the auspices of a State’s IV–D program, *i.e.*, under section 454(33).

8. Technical Assistance

Is it available? Who will provide the technical assistance? Will money be available for infrastructure development?

OCSE will provide technical assistance to Tribal CSE agencies operating Tribal CSE programs. In addition, this rule proposes that Tribes be able to use grant funds to obtain technical assistance from other Tribes, States and vendors and to provide technical assistance to other Tribes and States.

9. Eligibility/Start-up Costs

Who will be eligible to operate a Tribal CSE program? How quickly will a Tribe or Tribal organization be expected to have its program operational? Will there be provisions for start-up costs?

We propose that Federally recognized Tribes and Tribal organizations with at least 100 children under the age of majority as defined by Tribal law or code and within their jurisdiction are eligible to apply to directly operate a Tribal CSE program. We encourage Tribes with fewer than 100 children under the age of majority within their jurisdictions to consider entering into consortia arrangements with other Tribes, so that the combined total number of children under the age of majority within the Tribes’ jurisdictions is 100 or more. These consortia could qualify as Tribal organizations for direct Tribal CSE funding. These arrangements could assist participants in providing efficient and effective child support enforcement services.

We anticipate that some Tribes and Tribal organizations will need time to structure programs and put in place the necessary laws and procedures. Accordingly, we propose to make start-up funding available for a maximum of two years, during which time we expect the Tribe or Tribal organization to make satisfactory progress in putting the required elements of a full CSE program in place. By the end of this start-up phase, we expect the Tribe to be able to operate—either directly or via contracts or agreements with other parties—all required elements.

Regulatory Reform

In its latest *Document Drafting Handbook*, the Office of the Federal Register supports the efforts of the National Performance Review and encourages Federal agencies to produce more reader-friendly regulations. In a memo dated June 1, 1998, the President urged the use of plain language in Government writing. In drafting this proposed rule, we have paid close attention to this guidance.

Regulatory Philosophy

Federal statutory and regulatory requirements on State child support programs have evolved and grown more specific over time. Many Tribes are just beginning to provide child support services to families. We intend to work with Tribal CSE agencies to ensure that their ability to establish Tribal child support programs is strengthened and fine-tuned over time. Regulations governing Tribal CSE programs must

accommodate the differences between the new CSE programs of Federally recognized Tribes, which have a unique government-to-government relationship with the Federal government, and State CSE programs, which have evolved over the last two dozen years.

For the first time in the history of the Child Support Enforcement program, Tribes are specifically mentioned in the law. Section 455(f) of the Act, as added by PRWORA, gives OCSE an opportunity to provide direct funding to Indian Tribes in an unprecedented manner and to support Tribal self-determination. These regulations reflect OCSE’s commitment to partnership with Tribes and Tribal organizations.

Scope of Rulemaking

This regulation focuses on the explicit requirement in section 455(f) of the Act, which allows the Secretary to make direct payments to Tribes and Tribal organizations that demonstrate the capacity to operate a CSE program which meets the objectives of title IV–D of the Act, including establishment of paternity, establishment, modification, and enforcement of support orders, and location of absent parents.

We propose to amend the Federal child support regulations by adding a new part 309, Tribal Child Support Enforcement (CSE) Program, under title 45 of the Code of Federal Regulations. This NPRM proposes to establish a basic regulatory structure for the Tribal CSE program in proposed part 309, which consists of subparts A through F.

In the separate interim final rule published concurrently with this NPRM, we are codifying interim final regulations for Tribes and Tribal organizations that currently operate comprehensive CSE programs. The interim final rule adds a new part 310, Comprehensive Tribal Child Support Enforcement (CSE) Programs, to the Federal child support regulations. 45 CFR Part 310 is effective upon publication of the interim final rule.

In this NPRM, we are proposing for public comment essentially the same set of requirements as are in subparts A through F of the interim final rule, with the following exception. The NPRM includes proposed provisions both for Tribes and Tribal organizations that already are able to operate full, comprehensive CSE programs, and for Tribes and Tribal organizations that do not already operate comprehensive CSE programs and need program development funding for start-up CSE programs. Because the interim final rule applies only to Tribes and Tribal organizations that already operate comprehensive CSE programs, it does

not include provisions for program development funding for start-up CSE programs. (The proposed program development start-up provisions in this NPRM are in §§ 309.15(b)(2), 309.25(d), 309.65(b), 309.65(c), and 309.150.)

We will develop final rules for Tribal CSE programs based on comments on this NPRM and the interim rule. The final rules will apply to all Tribal CSE programs. We expect the final rules to be codified at 45 CFR part 309. When the final rules for Tribal CSE programs are published, 45 CFR part 310 (the interim final rule) will be deleted from the Federal child support regulations.

Discussion of Regulatory Provisions

The following is a discussion of all the regulatory provisions included in this NPRM. The discussion follows the order of regulatory text, addressing each subpart and section in turn.

Subpart A—Tribal Child Support Enforcement (CSE) Program: General Provisions

What Does This Part Cover? (section 309.01)

In paragraph (a), we propose that part 309 prescribe the rules for implementing section 455(f) of the Social Security Act (the Act). Section 455(f) of the Act authorizes direct grants for Indian Tribes and Tribal organizations to operate child support enforcement programs.

In paragraph (b), we propose that these regulations establish the requirements that must be met by Indian Tribes and Tribal organizations to be eligible for grants under section 455(f). They also establish requirements for: Tribal CSE plan and application content, submission, approval, and amendment; program funding; program operation; uses of funds; accountability; reporting; and other program requirements and procedures.

In recognition of the unique legal relationship the United States has with Tribal governments, these regulations will be applied in a manner that respects and promotes the government-to-government relationship between Federally recognized Indian Tribal governments and the United States government and Tribal self-determination.

What Definitions Apply to This Part? (section 309.05)

This section of the proposed rule includes definitions of some terms used in part 309. In drafting this section, we have defined those terms used in the proposed rule that must be understood consistently by all who use these rules.

Most terms are self-explanatory, *e.g.*, acronyms or shortened versions of longer titles. Only five bear further explanation in this preamble.

We define *CSE services* as “the services that are required for establishment of paternity, establishment, modification, and enforcement of support orders, and location of noncustodial parents as required in title IV-D of the Act, this rule, and the Tribal CSE plan. In some situations, the appropriate service may be for a Tribe or Tribal organization to refer an applicant for CSE services to another Tribal CSE agency or a State IV-D agency.”

We define *Indian* as “a person who is a member of an Indian Tribe.” This is the same as the definition of this term in section 4 of the Indian Self-Determination and Education Assistance Act, Public Law 93–638.

We define *Indian Tribe and Tribe* as “any Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe and includes in the list of Federally recognized Indian Tribal governments as published in the **Federal Register** pursuant to 25 U.S.C. 479a–1.” This definition includes the definition of “Indian tribe” from section 102 of the Federally Recognized Indian Tribe List Act of 1994, Public Law 103–454 (25 U.S.C. 479a), which also is included at 18 U.S.C. 228, “Failure to pay legal child support obligations.”

Because child support enforcement requires at least delegated governmental authority, we propose that basic eligibility under section 455(f) be limited to Federally recognized Indian Tribal governments. The Federal government acknowledges the governmental status of these Tribes and has a government-to-government relationship with them.

The Department of the Interior’s published list of Federally recognized Tribes includes Tribes in the contiguous 48 States and Alaska Native villages and Tribes that function as political entities exercising governmental authority. The list includes all Indian Tribes which the Department of the Interior recognizes to be eligible for the special programs and services provided by the United States to Indians because of their status as Indians. In the Tribal CSE program we propose to use the most current list of Federally recognized Tribes, including any Tribes added to each current list after publication.

The most recent list of these Tribes, entitled “Indian Entities Recognized and Eligible to Receive Services From the United States Bureau of Indian

Affairs,” was published in the **Federal Register** in a notice on March 13, 2000, pursuant to section 104 of Public Law 103–454. This notice states that these “entities are acknowledged to have the immunities and privileges available to other federally acknowledged Indian tribes by virtue of their government-to-government relationship with the United States as well as the responsibilities, powers, limitations and obligations of such tribes.”

We define *Tribal CSE agency* as “the organizational unit in the Tribe or Tribal organization that has the delegated authority for administering or supervising the Tribal CSE program under section 455(f) of the Act.”

We define *Tribal organization* as “the recognized governing body of any Indian Tribe as defined in this part; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: Provided, That in any case where a contract is let or grant made to an organization to perform services benefitting one or more Indian Tribes, the approval of each such Indian Tribe shall be a prerequisite to the letting or making of such contract or grant.” This definition of “Tribal organization” is based on the definition of “tribal organization” in section 4 of the Indian Self-Determination and Education Assistance Act, Public Law 93–638.

We have determined that basic eligibility for direct IV-D funding for Tribal CSE programs under section 455(f) is limited to Federally recognized Indian Tribes that exercise governmental authority. As any other governmental entity, eligible Tribes may delegate certain governmental authority to non-governmental bodies. This aspect of sovereignty is not unique to Indian Tribes but is equally applicable to State governments as well. We therefore propose that, in implementing section 455(f), a Federally recognized Tribal government may choose to carry out its own child support enforcement program, or it may choose to designate a Tribal organization to carry out a CSE program on its behalf. The Tribal organization would be vested by the Tribe to apply for and carry out a CSE program on its behalf; the Tribe’s authorization would be provided by resolution.

Section 454(33) of the Act incorporates the definitions of “Indian tribe” and “tribal organization” in section 4 of Public Law 93–638. Section

454(33) authorizes cooperative agreements between certain Indian Tribes or Tribal organizations and State agencies operating a State Child Support Enforcement Program under title IV–D of the Act to “provide for the cooperative delivery of child support enforcement services in Indian country.” As noted, we believe that child support enforcement requires certain inherent governmental authorities. Because the definition of “Indian tribe” in Public Law 93–638 includes some entities that are not Tribal governments (e.g., the Alaska Native regional and village corporations as defined in or established pursuant to the Alaska Native Claims Settlement Act), we have not adopted that definition of “Indian Tribe” in this proposed rule for Tribal CSE programs under section 455(f). However, because CSE programs carried out under cooperative agreements pursuant to section 454(33) are carried out as part of a State government’s CSE program, it is not necessary for “Indian Tribes” that reach cooperative agreements with States under section 454(33) to be governments.

We are interested in receiving public comments on our proposed definitions of Indian Tribe and Tribal organization.

Who is eligible to apply for Federal funding to operate a Tribal CSE program? (section 309.10)

In proposed paragraph (a), an Indian Tribe with at least 100 children under the age of majority as defined by Tribal law or code, in the population subject to the jurisdiction of the Tribe, is eligible to apply to receive Federal funding to operate a Tribal CSE program meeting the requirements of this part.

In proposed paragraph (b), a Tribal organization that demonstrates the authorization of one or more Indian Tribes to operate a Tribal CSE program on their behalf is eligible to apply to receive Federal funding to operate a Tribal CSE program meeting the requirements of this part. In order for a Tribal organization to receive Tribal CSE funding, there must be at least 100 children under the age of majority as defined by Tribal law or code, in the population subject to the jurisdiction of the Tribe(s) on whose behalf the organization is applying.

We considered allowing Tribes with at least 50 children under the age of majority to apply for direct funding. The Child Care and Development Fund program, which also is administered by the Administration for Children and Families, requires a minimum of 50 children under age 13.

However, we believe that requiring a minimum of 100 children under the age of majority would be more appropriate for the Tribal child support enforcement program. This proposed requirement is based on the economics of establishing a CSE infrastructure and operating a CSE program. We believe that a CSE program can effectively and efficiently serve a 100-child population. We have concerns about whether it would be cost effective to operate a separate CSE program serving fewer children.

Tribes with fewer than 100 children will not be excluded from the Tribal CSE program. They may form a consortium with other Tribes to form a larger base and provide services to the children in need; one example of a Tribal organization that may apply for and receive direct Tribal CSE funding is a consortium of Tribes that, individually, may not have 100 children within their CSE jurisdictions, but have a combined total of 100 or more children when joined in the consortium. In addition, Tribes may authorize an existing Tribal organization (such as an Alaska Native regional nonprofit or an inter-tribal council) or another Tribe to provide CSE services on their behalf. This will enable them to take advantage of economies of scale and other benefits associated with larger programs, and will help to ensure that the programs are cost effective.

The proposed minimum of 100 children is based on the best information available to us at this time. However, we are specifically requesting comments on the minimum number of children that could be served by a Tribal CSE program at a cost that is reasonable.

Federally recognized Indian Tribal governments possess inherent governmental authority and sovereignty rights. The Federal government has a government-to-government relationship with them. As noted, we believe that eligibility to apply for direct grants for child support enforcement programs requires governmental authority. In proposed paragraph (b), each Tribal organization applying to operate a Tribal CSE program on behalf of one or more Tribes must include documentation of authorization from each Tribe to operate a Tribal CSE program on its behalf.

Subpart B—Tribal CSE Program Application Procedures

What is a Tribal CSE program application? (section 309.15)

This section of the proposed rule will establish the mandatory elements of a request for funding under section 455(f) of the Act.

In paragraph (a), we define a Tribal CSE initial funding application. The application includes standard application forms (SF 424, Application for Federal Assistance, and SF 424A—Budget Information—Non-Construction Programs) and a Tribal CSE plan.

The standard application forms outline the costs estimated by Tribes and Tribal organizations for funding of Tribal CSE programs on an annual basis. The forms require information including name of agency, type of application, descriptive title of applicant’s project, estimated funding, budget categories (personnel, travel, equipment, supplies, contractual, indirect charges), non-Federal resources and forecasted cash needs. Tribes and Tribal organizations have used these forms and are familiar with them. Rather than develop a new application form, we chose to use existing forms.

The Tribal CSE plan is a comprehensive statement meeting the requirements of subpart C, that describes the capacity of the Tribe or Tribal organization to operate a CSE program meeting the objectives of title IV–D of the Act, including the establishment of paternity, establishment, modification, and enforcement of support orders, and location of noncustodial parents.

In proposed paragraph (b), we define Tribal CSE annual refunding applications. Refunding applications include standard application forms SF 424 and SF 424A. As appropriate, refunding applications also may include amendment(s) to the Tribal CSE plan. The refunding application of a Tribe or Tribal organization receiving start-up funding under § 309.65(b) also must include a progress report on its accomplishments to date and any proposed changes to its CSE plan and schedule.

In paragraph (c), we propose that the application of a Tribal organization must adequately demonstrate that each participating Tribe authorizes the Tribal organization to operate a Tribal CSE program on its behalf. This language is meant to ensure that a Tribal organization representing itself as an agent of a Tribe has the express authority to do so.

Who submits a Tribal CSE program application? (section 309.20)

Under § 309.20, we propose that the authorized representative of the Tribe or Tribal organization must sign and submit the Tribal CSE program application.

Originally, there was much discussion about who should submit the application. Because there are so many

different titles for Tribal leaders, and since Tribal CSE programs might be operated by a Tribal organization, we decided that the term "authorized representative" would mean an individual authorized by a Tribe or Tribal organization to submit that Tribe or Tribal organization's application.

When must a Tribe or Tribal organization submit a Tribal CSE program application? (section 309.25)

In paragraph (a) we propose that the initial application consisting of the Tribal CSE program plan that meets the requirements under Subpart C, and the Application and Budget Information forms (SF 424, Application for Federal Assistance and the SF 424A, Budget Information—Non-Construction Programs) may be submitted at any time.

In maintaining flexibility for the Tribes and Tribal organizations, we believe that permitting the submission of applications at any point in the fiscal year will be advantageous because the Tribes and Tribal organizations will not be constricted by the Federal fiscal year and may submit an application when they are ready to begin operation of a Tribal CSE program. This will not impose any deadlines for Tribes and Tribal organizations submitting initial applications.

In paragraph (b), we propose that subsequent refunding applications containing only SF 424, Application for Federal Assistance and SF 424A, Budget Information—Non-Construction Programs, must be submitted annually, 60 days before the beginning of the next budget period if the Tribe or Tribal organization wishes to receive its funding on time. The refunding requests are necessary after approval of the initial application, and must be approved on an annual basis, because the Tribes and Tribal organizations will be operating on an annual funding cycle.

In paragraph (c), we propose that if a Tribe or Tribal organization intends to make any substantial or material change in any aspect of the Tribal CSE program: (1) A Tribal CSE plan amendment describing and, as appropriate, documenting the changes the Tribe or Tribal organization proposes to make to its CSE plan, consistent with the requirements in § 309.65, must be submitted at the earliest reasonable time for approval under § 309.35; and (2) any amendment of an approved Tribal CSE plan may, at the option of the Tribe or Tribal organization, be considered as a submission of a new Tribal CSE plan. If the Tribe or Tribal organization requests that an amendment be considered as a

submission of a new plan, the amendment must be submitted no less than 90 days before the proposed effective date of the new plan.

In paragraph (d), we propose that if a Tribe or Tribal organization receives funding based on submittal and approval of a Tribal CSE plan under § 309.65(b), a progress report that describes accomplishments to date and any alterations to the Tribe or Tribal organization's plan and schedule must be submitted with the next annual refunding request. We want to ensure that the Tribal CSE agency is making progress towards implementation of a fully operational Tribal CSE program. This is discussed in more detail in a later section of the preamble.

In paragraph (e), we propose that the effective date of a plan amendment may not be earlier than the first day of the calendar quarter in which an approvable plan is submitted.

Where does the Tribe or Tribal organization submit the application? (section 309.30)

We propose that applications must be submitted to the Federal Office of Child Support Enforcement, Attention: Tribal Child Support Enforcement Program, 370 L'Enfant Promenade, SW, Washington, DC 20447, with a copy to the appropriate Regional Office.

We also encourage Tribes and Tribal organizations to provide a copy of their approved Tribal CSE plan to their State counterparts. Communication between Tribes and Tribal organizations and State IV–D agencies will facilitate child support services. This may help to eliminate duplicate efforts on the part of both Tribal CSE agencies and State IV–D agencies.

What are the procedures for approval or disapproval of Tribal CSE program applications and plan amendment(s)? (section 309.35)

In paragraph (a), we propose that the Secretary of the Department of Health and Human Services or designee will determine whether the Tribal CSE program application or Tribal CSE plan amendment submitted for approval conforms to the requirements of approval under the Act and these regulations not later than the 90th day following the date on which the Tribal CSE application or Tribal CSE plan amendment is received by the Secretary or designee, unless additional information is needed from the Tribe or Tribal organization. The Secretary or designee will notify the Tribe or Tribal organization if additional time or information is required to determine whether the application or plan

amendment may be approved. It is important to note that this paragraph provides that applications will be approved or disapproved by the Secretary or designee, in keeping with the government-to-government relationship.

In paragraph (b), we propose that the Secretary or designee will approve the application or determine that the application will be disapproved within 45 days of receipt of any additional information requested from the Tribe or Tribal organization.

We believe parameters for approval and disapproval of applications are important. We contemplated a 45-day timeframe for review of the application, but decided that would be unrealistic and decided on 90 days for the review of applications. We also wanted to make allowances for the occasional submission of an incomplete plan and the resubmission of required information. OCSE will work closely with the Tribes and Tribal organizations to ensure that applications are approved (or disapproved) in accordance with the timeframes set forth. We think that this approach to the timeframes will be acceptable to all parties.

OCSE also considered imposing timeframes for Tribes' submission of additional information necessary to complete their applications. However, we decided that as it was in a Tribe's best interest to submit such information quickly, there was no need to impose an arbitrary deadline. In general, we have attempted in this regulation not to impose due dates and timeframes unless there was a compelling Federal interest to be satisfied.

What is the basis for disapproval of a Tribal CSE program application or plan amendment(s)? (section 309.40)

In paragraph (a), we propose an application or plan amendment will be disapproved if:

(1) The Secretary or designee determines that the application or plan amendment fails to meet one or more of the requirements set forth in this part;

(2) The Secretary or designee determines that the laws, codes, regulations and procedures contained in the application or plan amendment will not achieve the outcomes consistent with the objectives of title IV–D including: Establishment of paternity, establishment, modification and enforcement of support orders and location of noncustodial parents; ensuring access to services; basing child support orders on the noncustodial parent's ability to pay; distribution of payments to families; protecting due

process rights of the individuals involved; and safeguarding data;

(3) The Secretary or designee determines that the application or plan amendment is not complete (after the Tribe or Tribal organization has had the opportunity to submit the necessary information); or

(4) The Secretary or designee determines the requested funding is not reasonable and necessary (after the Tribe or Tribal organization has had the opportunity to make appropriate adjustments).

The requirements of the application and plan are found at § 309.65. Not only must these required elements be included in the Tribal plan, there must be evidence that the procedures outlined in the plan will result in outcomes consistent with the objectives of the title IV–D program. A Tribe or Tribal organization must demonstrate that its submission is expected to achieve desired outcomes, including establishment of paternity, establishment, modification and enforcement of support orders, and location of noncustodial parents; ensuring access to services; basing child support orders on the noncustodial parent's ability to pay; distribution of payments to families; protection of due process rights of the individuals involved; and safeguarding of data. Each requirement is discussed in more detail in another section of the preamble.

In paragraph (b), we propose that a written Notice of Disapproval of the Tribal CSE program application will be sent to the Tribe or Tribal organization upon the determination that any of the conditions of § 309.40(a) apply. The Notice of Disapproval will include the specific reason(s) for disapproval.

How may a Tribe or Tribal organization request a reconsideration of a disapproval action? (section 309.45)

In paragraph (a), we propose that a Tribe or Tribal organization may request reconsideration of disapproval of a Tribal CSE application or amendment by filing a written Request for Reconsideration to the Secretary or designee within 60 days of the date of the Notice of Disapproval.

In proposed paragraph (b), the Request for Reconsideration must include (1) all documentation that the Tribe or Tribal organization believes is relevant and supportive of its application or plan amendment; and (2) a written response to each ground for disapproval identified in the Notice of Disapproval, indicating why the Tribe or Tribal organization believes its application or plan amendment conforms to the requirements for

approval specified at § 309.65 and subpart C.

After receiving a Request for Reconsideration, the Secretary or designee will hold a conference call or, at the Department's discretion, a meeting with the Tribe or Tribal organization as part of the reconsideration, to discuss the reasons for the Department's disapproval of the application or plan amendment, and the Tribe or Tribal organization's response. In paragraph (c), we propose that within 30 days after receipt of a Request for Reconsideration, the Secretary or designee will notify the Tribe or Tribal organization of the date and time the conference call or meeting will be held. In paragraph (d), we propose that the conference call or meeting shall be held not less than 30 days nor more than 60 days after the date the notice of the call or meeting is furnished to the Tribe or Tribal organization, unless the Tribe or Tribal organization agrees in writing to another time. In paragraph (e), we propose that the Secretary or designee will make a written determination affirming, modifying, or reversing disapproval of a Tribal CSE program application or plan amendment within 60 days after the conference call or meeting is held, and that this determination upon reconsideration will be the final decision of the Secretary concerning this application or plan amendment. No further administrative appeal would be permitted.

In paragraph (f), we propose the Secretary or designee's initial determination that a Tribal CSE application or plan amendment is not approvable remains in effect pending reconsideration under this part.

These provisions will ensure that any Tribe or Tribal organization whose CSE program application is disapproved will have the benefit of reconsideration provided that it requests reconsideration in a timely manner.

What are the consequences of disapproval of a Tribal CSE program application or plan amendment? (section 309.50)

In paragraph (a), we propose that if an application submitted pursuant to § 309.25 is disapproved, the Tribe or Tribal organization can receive no funding under section 455(f) of the Act or this part until a new application is submitted and approved.

In proposed paragraph (b), if a plan amendment is disapproved there is no funding for the activity proposed in the plan amendment.

In proposed paragraph (c), a Tribe or Tribal organization whose application

or plan amendment has been disapproved may reapply at any time. Once a Tribe or Tribal organization has remedied the deficiency in its application that caused the disapproval, it may reapply for Federal funding.

Subpart C—Tribal CSE Plan Requirements

What does this subpart cover? (section 309.55)

During consultation with the Tribes, it was evident that Tribes wanted regulations that were broad and not overly prescriptive. Tribes said that regulations that were too prescriptive would impinge on sovereignty issues and issues of tradition and custom. The statute indicates that a Tribe or Tribal organization must demonstrate the capacity to run a program that meets the objectives of title IV–D of the Act. We believe the mandatory requirements that we propose are necessary components that must be in place in order to meet title IV–D objectives and to operate the program efficiently and effectively.

We have included in the plan requirements only those items that we have concluded must be present in order for a Tribe or Tribal organization to demonstrate that it is capable of carrying out a child support program that meets the objectives of title IV–D. While the proposed regulation lists a number of functions that a Tribe or Tribal organization must include in its plan, we have, for the most part, regulated neither the manner in which those functions must be carried out nor the timeframe. In those cases where we have included more specificity, this reflects our conclusion that additional guidance was necessary to ensure that the objectives of title IV–D would be met or to ensure the effective and efficient administration of Tribal CSE programs.

With respect to timeframes, we continue to believe that timely action is essential to effective services. In fact, title IV–D has been amended over the years, to mandate various case processing timeframes for State action, especially as programs have become more automated. However, we believe it would be premature to consider such timeframes with respect to Tribal programs. Like States, Tribes need adequate time to develop their programs and to determine appropriate approaches, levels of automation, and processes for delivering services before adequate information will exist to consider specific timeframes for taking action. However, with such experience we believe timeframes for Tribal case processing may work to ensure that

Tribal families receive prompt and effective services.

As States gained experience in operating IV–D programs, we worked with them to set timeframe requirements for State programs. Similarly, as Tribes gain experience in operating CSE programs, we are committed to working with them to address timeframe requirements for Tribal programs. Tribes and we need experience with operational Tribal programs in order to learn how long it takes to carry out various Tribal CSE functions and to develop realistic timeframes based on this experience. Since most Tribal CSE programs will initially be start-up programs, we are proposing to begin these discussions with Tribes on the development of timeframes three years after publication of the final rules. As that point we hope to have sufficient experience with Tribal CSE programs to begin formally incorporating appropriate timeframes into Tribal CSE programs. Given the importance of timeframes in the Child Support program, we encourage your comments on this proposed approach to development of timeframes. Is three years too long to wait to begin discussion? Does three years provide sufficient time/experience with Tribal Child Support programs to develop workable timeframes?

In the meantime, we will communicate extensively with Tribes as they begin to design their CSE programs and applications and to implement their CSE programs. We will provide technical assistance to help them set realistic timeframe goals and carry out CSE functions in a timely and effective way.

We have attempted to keep the list of tasks that a Tribal CSE program must carry out in order to meet the criteria for direct Federal funding to the minimum necessary to ensure an effective and successful Tribal CSE program. In developing this list, we believe that every child support program in the United States must have certain fundamental characteristics in order to be successful and to enhance the effectiveness of the National child support effort. In developing this list, we have gone beyond the five core functions listed in section 455(f) of the Act. However, we believe the additional tasks we propose to add are consistent with the statutory requirement that a Tribe or Tribal organization demonstrate that it has the capacity to operate a child support enforcement program meeting the objectives of title IV–D of the Act.

These tasks ensure that Tribes and Tribal organizations will be able to take advantage of enforcement techniques

that have been proven to be effective and will ensure that Tribes and Tribal organizations will be able to call on the resources of the entire National child support effort in pursuing noncustodial parents, both on and off the reservation.

Therefore, we propose to define in this subpart the Tribal CSE plan provisions which are required and which demonstrate that a Tribe or Tribal organization has the capacity to operate a child support enforcement program meeting the objectives of title IV–D of the Act, including establishment of paternity, establishment, modification, and enforcement of support orders, and location of noncustodial parents. The plan is a narrative description of the Tribal CSE program. We chose not to regulate exactly the format, but rather to give parameters for Tribal plans. It is not our intention to tell a Tribal CSE agency how to write its plan; each plan may be different as long as it contains the required information. A recurring concern during the consultations was that Tribes wanted a child support program that was sensitive to Tribal values, customs and traditions. Because of the unique government to government relationship, the Tribal CSE plan gives the Tribe or Tribal organization an opportunity to outline its child support program-describing Tribal codes, laws, values, customs and traditions as they relate to CSE, showing how it meets each of the statutory requirements for direct funding, and describing in detail the child support enforcement program it will operate.

Who is ultimately responsible for administration of the Tribal CSE program under the Tribal CSE plan? (Section 309.60)

In paragraph (a), we propose that under the Tribal CSE plan, the Tribe or Tribal organization shall establish or designate an agency to administer the Tribal CSE plan. That agency shall be referred to as the Tribal CSE agency.

In paragraph (b), we propose that the Tribe or Tribal organization is responsible and accountable for the operation of the Tribal CSE program. Except where otherwise provided in this part, the Tribal CSE agency need not perform all the functions of the Tribal CSE program, so long as the Tribe or Tribal organization insures that all approved functions are carried out properly, efficiently and effectively.

In proposed paragraph (c), if the Tribe or Tribal organization delegates any of the functions of the Tribal CSE program to another Tribe, a State and/or another agency pursuant to a cooperative agreement, contract or Tribal resolution, the Tribe or Tribal organization is

responsible for securing compliance with the requirements of the Tribal CSE plan by such Tribe, State or agency. The Tribe or Tribal organization is responsible for submitting copies and appending to the Tribal CSE plan any agreements, contracts or Tribal resolutions between the Tribal CSE agency and a Tribe, State or other agency.

A Tribe or Tribal organization may choose to provide CSE services in any number of combinations: for example, by operating a program under agreement with a State whereby the State provides some or all services or by contracting with a private organization. The Tribe is responsible for ensuring that the designated agency and those entities with which the designated agency has contracts or agreements comply with the requirements of 455(f) and these regulations.

What must a Tribe or Tribal organization include in a Tribal CSE plan in order to demonstrate capacity to operate a Tribal CSE program? (Section 309.65)

We are proposing that at the time of its application, a Tribe or Tribal organization may demonstrate capacity to operate a Tribal CSE program either under proposed paragraph (a) or proposed paragraph (b). Proposed paragraph (a) lists all the requirements a Tribe or Tribal organization must meet in order to operate a full service child support program under section 455(f) of the Act. Proposed paragraph (b) describes the requirements a Tribe or Tribal organization must meet in order to receive “start-up” funding under section 455(f) to develop a program meeting all the requirements specified in paragraph (a).

In proposed paragraph (a), a Tribe or Tribal organization may demonstrate the capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act by submission of a Tribal CSE plan which meets the following requirements.

In paragraph (a)(1), we propose that the plan describe the population subject to the jurisdiction of the Tribal court or administrative agency for child support purposes, as specified under § 309.70.

In paragraph (a)(2), we propose that the plan include procedures for accepting all applications for CSE services and providing appropriate CSE services, including referral to appropriate agencies. OCSE requires that all child support agencies accept applications for service from anyone and requires that the child support agency provide appropriate services. Issues surrounding jurisdiction are

complicated and we want to ensure that no one is denied service. So, we require that a child support agency, whether Tribal or State, accept any application for services and determine the types of services needed by the applicant and whether it can provide them. In some cases, *e.g.*, where a Tribal court or child support agency has no jurisdiction over any of the parties in a case, the only appropriate service may be to refer the applicant to an agency that can provide services. The "appropriate agencies" will be either Tribal CSE agencies in another jurisdiction, or a State IV-D agency with jurisdiction over the case.

In paragraph (a)(3), we propose that the plan include assurance that the due process rights of the individuals involved will be protected in all activities of the Tribal CSE program, including establishment of paternity, establishment, modification, and enforcement of support orders.

In paragraph (a)(4), we propose that the plan include administrative and management procedures as specified under § 309.75.

In paragraph (a)(5), we propose that the plan include safeguarding procedures as specified under § 309.80.

In paragraph (a)(6), we propose that the plan include assurance that the Tribe or Tribal organization will maintain records as specified under § 309.85.

In paragraph (a)(7), we propose that the plan include copies of all applicable Tribal laws and regulations as specified under § 309.90.

In paragraph (a)(8), we propose that the plan include procedures for the location of noncustodial parents as specified under § 309.95.

In paragraph (a)(9), we propose that the plan include procedures for the establishment of paternity as specified under § 309.100.

In paragraph (a)(10), we propose that the plan include guidelines for the establishment and modification of child support obligations as specified under § 309.105.

In paragraph (a)(11), we propose that the plan include procedures for income withholding as specified under § 309.110.

In paragraph (a)(12), we propose that the plan include procedures for the distribution of child support collections as specified under § 309.115.

In paragraph (a)(13), we propose that the plan include procedures for intergovernmental case processing as specified under § 309.120.

The requirements proposed in paragraphs (a)(3)–(a)(13) are the basic requirements of a child support enforcement program. These

fundamental requirements have proven to be critical to successful establishment and enforcement of support orders in the State IV-D programs. In choosing these requirements, we have drawn from the experiences of the programs operating successfully since the inception of the Child Support Enforcement program. These requirements will ensure that records are secure, protect individuals and their privacy, and ensure the minimum necessary level of commonality between Tribal and State programs to ensure that we continue to have an efficient and effective child support enforcement program across the Nation. A more detailed explanation of each of the requirements can be found in the proposed sections of the NPRM as indicated above.

In paragraph (a)(14), we propose that the plan include reasonable performance targets for paternity establishment, support order establishment, amount of current support to be collected and amount of past-due support to be collected.

Initially, attainment of the performance targets will not be tied to funding. The plan must include the performance targets, but funding is not contingent upon the targets being met. In the statistical and narrative reports required at § 309.170, grantees must report on their success in reaching their performance targets. We do not want to set arbitrary performance targets for Tribal CSE agencies, and we believe that each Tribe or Tribal organization should be able to estimate the targets it can attain. We will assure that technical assistance is provided to help Tribal CSE programs set and meet appropriate performance targets.

We need more experience with, and information on, operational Tribal CSE programs before we determine what performance standards to require for them. Within three years of publication of the final rule and after Tribal CSE programs have gained experience and had an opportunity to gather data on performance, we will have a better understanding of what targets are attainable. At that point, we plan to work with Tribal CSE agencies to develop and regulate performance standards, and to implement requirements for performance standards as an important element in Tribal CSE programs. As part of that process, we plan to define the relationship between performance standards and funding.

As we develop performance standards for Tribal CSE programs, we will look to our experience in establishing performance standards for State IV-D programs. We developed these

standards over several years, in cooperation with States. After enactment of the Government Performance and Results Act of 1993, which requires Federal programs to set goals and measure results by establishing strategic plans, OCSE and States worked together to develop the National Child Support Enforcement Strategic Plan. The plan includes goals for States' IV-D programs and provides the foundation for building a results-oriented framework for these programs. Since the plan's completion in 1995, OCSE and States have worked together to develop specific performance indicators and related performance standards to be used to measure the IV-D program's success in achieving its goals.

Beyond strategic planning, the use of these performance indicators has evolved, and they now serve as the basis for a performance-based incentive and penalty system for State child support programs. For purposes of incentives, States will be measured on their performance levels in the following areas: Paternity establishment; establishment of support orders; collections for current support; case collections for child support arrearages; and cost-effectiveness. With respect to performance penalties, there is a statutory penalty for paternity establishment and the Secretary has authority to regulate additional performance penalties. We believe that these performance measures are essential for ensuring that States are held accountable for maintaining efficient and effective child support services for children. We have shifted to this outcome-oriented approach to child support enforcement program accountability in seeking to balance the Federal government's oversight responsibility with States' responsibility for child support service delivery and fiscal accountability. This system allows us to measure and reward or sanction State performance in terms of outcomes for children, replacing a system that for years focused only on process.

In developing performance standards for Tribal CSE programs, we are committed to working closely with Tribes—as we worked closely with States—to develop performance standards that measure accomplishments in meeting the basic functional requirements of Tribal CSE programs. As discussed above, we consulted extensively with State IV-D programs to reach consensus on performance measures, and we intend to carry out a similar process with Tribes. We are specifically seeking comments on our approach for developing

performance standards for Tribal CSE programs.

In proposed paragraph (b), if a Tribe or Tribal organization is unable to satisfy any or all of the requirements specified in paragraph (a), it may demonstrate capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act by submission of a Tribal CSE program development plan detailing: (1) With respect to each requirement in paragraph (a) that the Tribe or Tribal organization currently meets, a description of how the Tribe or Tribal organization satisfies the requirement, and (2) with respect to each requirement in paragraph (a) that the Tribe or Tribal organization does not currently meet, the specific steps the Tribe or Tribal organization will take to come into compliance and the time frame associated with each step.

The Tribal CSE program development plan must demonstrate to the satisfaction of the Secretary or designee that the Tribe or Tribal organization will have in place a Tribal CSE program that will meet the requirements outlined in paragraph (a), within a reasonable, specific period of time, not to exceed two years.

The program development plan should follow the same general format as a Tribal CSE plan submitted under § 309.65(a). The program development plan should address each element listed in § 309.65(a). For those functions that a Tribe or Tribal organization already performs, the program development plan should contain the same information that we require for a Tribal CSE plan. For those functions that a Tribe or Tribal organization currently does not perform, or does not perform consistent with the proposed regulation, the program development plan must include a description of how the Tribe or Tribal organization anticipates performing this function in order to meet the requirements of this part, the process the Tribe or Tribal organization will follow to achieve this, the milestones that the Tribe or Tribal organization will use to mark progress toward being capable of performing this function, and the schedule for meeting those milestones. In some cases, a Tribe or Tribal organization may not know, when it applies, exactly how it will perform one or more required functions. In that case, rather than describing how the Tribe or Tribal organization will perform the function, the program development plan should describe the process the Tribe or Tribal organization will use to make this decision, along with milestones and a schedule for this process.

We recognize that some Tribal CSE agencies may need Federal funding to move toward a completely operational program and believe that many Tribes and Tribal organizations not currently operating child support programs are capable of doing so. Section 309.150 of the proposed rule provides for “start-up” funds to allow Tribes and Tribal organizations which have the basic governmental and administrative capabilities necessary to run a child support program, to put in place over time a program meeting the requirements of section 455(f) and this regulation.

The statute provides that a Tribe or Tribal organization must demonstrate that it is capable of running a child support enforcement program. We have interpreted this to allow for a reasonable amount of time and a reasonable amount of Federal funding to establish a program.

Before providing CSE start-up funding, we plan to ensure that a Tribe or Tribal organization has the basic governmental and administrative functions in place that are necessary to support a CSE program. This includes such things as an effective accounting system and experience in successfully managing other service programs. We would view Tribes with these elements in place as capable of running a Tribal CSE program when they apply for start-up funding in accordance with the requirements of § 309.65(b). We will provide start-up funding to Tribes and Tribal organizations whose applications demonstrate the reasonable expectation that they will be ready within two years to operate a full, comprehensive CSE program.

However, we do not believe that Congress intended the Department to fund start-up activities for an extended period of time or without regard to the amount of resources devoted to starting a Tribal program. Accordingly, we have proposed to limit start-up funding to an amount not to exceed a total of \$500,000 in Federal funds for two years (except for Tribes and Tribal organizations that receive a waiver of the non-Federal share requirement under § 309.130(d)). Based on the experience of Tribes of varying sizes and circumstances that have started CSE programs, we believe that this amount of time and funding will enable Tribes and Tribal organizations to pay reasonable and necessary costs to complete start-up activities. For example, during year one, a Tribe might recruit, hire and begin to train its CSE program staff, and develop the necessary Tribal codes to operate a Tribal CSE program. Then, in year two, the Tribe could develop CSE systems

and procedures, enter into cooperative arrangements with State(s) and other local Tribal CSE agencies for the provision of child support enforcement services and reach agreements to satisfy any remaining requirements for the Tribe to operate its own child support enforcement program. We believe that, except in unusual cases, if a Tribe or Tribal organization needs more than \$500,000 in Federal funding or more than two years to begin a CSE program, the Tribe or organization would not be capable at this point of starting a CSE program. In extraordinary circumstances (for example, a Tribe had encountered unexpected delays in establishing its CSE program and was almost ready to begin operating a full CSE program at the end of year two), HHS would consider extending the period of time during which start-up funding will be available to a Tribe or Tribal organization and/or increasing the amount of start-up funding provided. Our presumption is that in very few cases would the start-up time period be extended or the start-up funding be increased.

We request comments on the appropriate length and maximum amount of start-up funding.

In paragraph (c), we propose that the Secretary or designee will cease funding a Tribe or Tribal organization's start-up efforts if that Tribe or Tribal organization fails to demonstrate satisfactory progress pursuant to §§ 309.15(b)(2) and 309.25(d) toward putting a full program in place. A Tribe or Tribal organization whose start-up efforts have been terminated may reapply at a later date once the conditions that impeded its progress to implement a Tribal CSE program have been rectified.

The Secretary or designee will make every effort to provide assistance to Tribal CSE agencies to meet milestones and to put in place full programs pursuant to § 309.65(a). We anticipate providing extensive technical assistance to Tribes receiving start-up funding to help assure that they develop full CSE programs within two years. We anticipate extensive communication (including Tribal submission of required reports) with these Tribes, so we will know how they are progressing and can increase technical assistance as needed.

We will treat seriously failure to meet critical milestones or to report promptly and fully on progress toward meeting milestones pursuant to § 309.65(b). The Secretary will cease funding a Tribal CSE agency's start-up efforts if that agency fails to demonstrate satisfactory progress toward putting a full program in place. The Secretary or designee will

base this determination on the milestones contained in the Tribal CSE agency's program development plan and its progress reports, pursuant to §§ 309.15(b)(2) and 309.25(d), supplemented by Tribal audits and OCSE reviews. A Tribe or Tribal organization that the Secretary proposes to terminate will be able to ask for reconsideration of the Secretary's decision following the procedures in § 309.45 of this regulation. A Tribe or Tribal organization whose start-up efforts have been terminated may reapply at a later date once the conditions that impeded its progress to implement a Tribal CSE program have been rectified, regardless of whether it has asked for reconsideration under § 309.45. However, our expectation is that only two full years of start-up funding in total will be provided to any Tribe, unless the Tribe can show extraordinary circumstances that indicate additional time is warranted (for example, if a Tribe faced a natural disaster).

When a Tribe or Tribal organization successfully completes its start-up funding period, it would submit an application to operate a full CSE program consistent with the requirements in § 309.65(a).

PRWORA made a number of important new enforcement tools available to child support agencies. PRWORA expanded the Federal Parent Locator Service (FPLS) which includes the National Directory of New Hires (NDNH), containing information from New Hire, Quarterly Wages and Unemployment Insurance Compensation reporting; and the Federal Case Registry (FCR), containing data about child support cases throughout the United States. In addition, the Federal Income Tax Refund Offset Program has proven to be a valuable means of collecting child support. We believe that Tribes and Tribal organizations' use of these tools will greatly improve the effectiveness of their child support enforcement programs.

Therefore, we are proposing to require that Tribes and Tribal organizations participate in or make use of the expanded FPLS (new hire reporting, quarterly wage reporting, NDNH and the FCR) and the Federal Income Tax Refund Offset Program to the extent possible or permitted under current law and in accordance with instructions issued by the Secretary or designee.

However, we are proposing to delay the effective date of this requirement until such time as the Secretary or designee issues guidance outlining the necessary procedures to comply with

these requirements and to ensure that all Tribes and Tribal organizations have at least two years to put these mechanisms in place.

In proposed paragraph (d), no later than two years from the implementation of a Tribal CSE program meeting the requirements specified in paragraph (a), or no later than two years after the Secretary or designee issues guidance outlining the necessary procedures to comply with proposed paragraph (d)(1) through (5), whichever is later, a Tribal CSE plan must include requirements outlined in paragraphs (d)(1) through (5).

Within two years of the date that the Secretary approves a Tribe's or Tribal organization's plan under paragraph (a), or the issuance of guidance outlining the procedures to comply with the proposed requirements of paragraph (d), the Tribe must have in place procedures meeting those requirements. A Tribe or Tribal organization that applies initially under paragraph (b) will have up to two years to develop a program that meets the requirements of paragraph (a). Once it meets the requirements of paragraph (a), it will have an additional two years (or two years from the issuance of guidance outlining the necessary procedures to meet the requirements of (d)) to comply with paragraph (d).

The delayed effective date of this requirement does not preclude a Tribe or Tribal organization from utilizing these tools earlier. However, at the present time the only method for doing so would be through a cooperative arrangement with a State. We are committed to providing Tribes with direct access to these mechanisms and we are working to put in place the necessary processes for doing so. If our efforts are delayed, we will delay the implementation deadline accordingly. We are specifically soliciting comments on both the two-year timeframe and for suggestions on how best to provide access.

We propose in paragraph (d)(1), that a Tribal CSE plan include procedures for requiring employers operating in the jurisdiction of the Tribe to report information about newly hired employees to the Tribal CSE agency in accordance with instructions issued by the Secretary or designee.

We propose in paragraph (d)(2), that a Tribal CSE plan include procedures for requiring employers operating in the jurisdiction of the Tribe to report wage information on a quarterly basis to the Tribal CSE agency in accordance with instructions issued by the Secretary or designee.

We propose in paragraph (d)(3), that a Tribal CSE plan include procedures

under which the Tribal CSE agency reports new hire and quarterly wage information to the National Directory of New Hires in accordance with instructions issued by the Secretary or designee.

We propose in paragraph (d)(4), that a Tribal CSE plan include procedures under which the Tribal CSE agency submits CSE cases to the Federal Case Registry in accordance with instructions issued by the Secretary or designee.

We propose in paragraph (d)(5), that a Tribal CSE plan include procedures for submitting CSE cases to the Federal Income Tax Refund Offset Program in accordance with instructions issued by the Secretary or designee.

The three Federal interface requirements of new hire reporting to the Tribal CSE agency, reporting to the National Directory of New Hires (NDNH), and the submittal of cases to the Federal Case Registry (FCR), are similar to requirements recently met by State programs under mandates in PRWORA. These tools are important for enforcement of child support orders; early indications are that these tools are producing dramatic results.

The Federal Parent Locator Service (FPLS) is a computerized network through which child support agencies may request information from a variety of sources to find noncustodial parents and/or their income, assets or employers for purposes of establishing paternity and securing support. PRWORA required the development of an expanded FPLS to improve child support agencies' ability to locate child support obligors and to establish and enforce child support orders, as well as for other specified purposes in title IV-D of the Act. The expanded FPLS is housed in the Social Security Administration's National Computer Center. The National Computer Center possesses state-of-the-art standards for system security and data confidentiality.

The expanded FPLS includes the National Directory of New Hires (NDNH) and a Federal Case Registry (FCR) and maintains the capability to seek information from existing (*i.e.*, pre-PRWORA) FPLS data sources, including, but not limited to, the Internal Revenue Service, Social Security Administration, Department of Defense, and Department of Veterans Affairs. The expanded FPLS performs regular cross matches between the National Directory of New Hires and the Federal Case Registry.

The NDNH contains three types of information. First, the NDNH maintains employment data on newly hired employees (new hire reporting) submitted by State Directories of New

Hires and by Federal agencies. Second, the NDNH maintains quarterly wage information on individual employees, including Federal employees. Third, the NDNH maintains unemployment compensation claims data. States are required to transmit new hire, quarterly wage and unemployment compensation claims data electronically to the NDNH. As Tribes and Tribal organizations begin to operate their own child support enforcement programs under section 455(f) of the Act, the NDNH will include information submitted by them, as well.

The purpose of the NDNH is to maintain a repository of information on newly hired employees, and on the earnings and unemployment compensation claims data of employees. The purpose of including quarterly wage and unemployment compensation claims data in the NDNH is to provide child support agencies with the ability to quickly locate information on the address of, employment of, and unemployment compensation being paid to parents with child support obligations who are residing or working in other States. Child support agencies seek to locate these parents and their employers to establish or enforce a child support order. Quarterly wage and unemployment compensation claims data provide information on continuously employed and unemployed individuals who would not be located solely by new hire reporting.

The Federal Case Registry (FCR) is a national registry of individuals involved in child support cases, constructed from abstracts of child support case and order information that child support agencies transmit to the FCR. The FPLS, through a matching process between NDNH and the Federal Case Registry, is able to automatically provide child support agencies with information on address, employment and unemployment compensation claims data on parents owing child support. Through internal FCR matching, the FPLS alerts child support agencies about other jurisdictions that have cases on the same individual.

However, the FPLS is designed around fixed network connections utilizing direct mainframe to mainframe data transmissions. OCSE is looking into alternative mechanisms that would provide Tribes and Tribal organizations with communications capabilities and cost-effective access to FPLS.

As mentioned in an earlier section of the preamble, the issue of access to the FPLS was raised during consultation. There is no legal impediment to Tribes and Tribal organizations that receive direct funding under section 455(f) of the Act from participating in the FPLS.

Access to the FPLS by Tribes and Tribal organizations requires some degree of automation in that the FPLS is designed to operate using electronically transmitted requests, and Tribes and Tribal organizations would be required to communicate their requests to, and receive responses from, the FPLS electronically. While the FPLS currently accepts limited types of physical media, *e.g.*, Reel Tapes, Cartridge, this is rapidly changing to electronic transmissions only. The FPLS production systems are being programmed to handle only electronically transmitted files over OCSE's established networks. This is currently how the Federal Case Registry (FCR) and National Directory of New Hires (NDNH) are programmed.

Programming for requests made outside of the electronic network is not planned.

The FPLS supports Federal to State, State to Federal, and State to State transmissions. There are currently two separate networks used for hosting FPLS child support transactions. The first network is SSA's File Transfer Management System (FTMS), which utilizes closed data lines via FTS2000 (generally 56kb lines or less) and a proprietary protocol (Connect: Direct) for file transfers. This network supports Federal to State and State to Federal file transfers. (SSA will not support an expansion of this network.) The second network used is the Child Support Enforcement Network (CSENet). CSENet supports State to State transmissions where the Federal host system is used to route the transmission from and to their destinations. This network is currently being upgraded and uses Frame Relay services through AT&T and the minimum connection is at 56kb.

The existing FPLS networks are fixed networks located at State sites and may not be suited for communication beyond their current configuration. Tribes and Tribal organizations that wish to utilize the FPLS before the effective date of the Federal interface requirements could choose to enter into cooperative arrangements with State IV-D agencies to process requests/responses to and from the FPLS.

The degree of automation necessary to meet most child support functionality is similar if not equivalent to State level child support systems. Many of the State level child support system functions interface directly with the FCR, NDNH, Federal Income Tax Refund Offset and other components of the FPLS. Therefore, State and Federal system automation and interfaces are closely developed and closely linked. While OCSE is very familiar with the functionality contained in State systems

and the degree of sophistication of those systems, it has no similar experience with automation at the Tribal level. Therefore, it will be important that OCSE determine the level of technical capabilities at the Tribal level and the technical requirements for a Tribal interface directly with OCSE for FPLS exchanges. Until this is done, it would be conjecture as to the best method of communicating with the Tribes and Tribal organizations and providing direct access to the FPLS. We are specifically soliciting comments and suggestions from Tribes and Tribal organizations on programs that would facilitate access. We are also soliciting comments about resources needed, such as staff, equipment, development of procedures, policy, costs, interagency agreements and estimated caseload. Without information about the current status of various Tribal child support computer systems, it would be difficult to accurately plan a schedule for implementation of Tribal access to the FPLS.

After the initial Tribal system assessment, consideration will be given to establishing a direct interface with the FPLS. Because it does not appear feasible to utilize existing networks for communication with the Tribes and Tribal organizations, alternative methods will need to be considered. There are several approaches that could be pursued, such as: The Internet or Virtual Private Networks (VPN). These alternatives, along with others may provide a practical means of communication. Additionally, Tribes and Tribal organizations would be expected to meet all the transaction specifications required of State systems necessary to process their requests. These specifications are technically complex and will require comprehensive automation and technical expertise to support compliance. It may take Tribes and Tribal organizations several years to develop the necessary automation to meet the automation and communication requirements.

The Federal Income Tax Refund Offset Program was established by Congress (Pub. L. 97-35) in 1981 and enforces delinquent child support obligations by intercepting part or all of an obligor's Federal income tax refund. This Federal collection mechanism involves the interaction of all State IV-D agencies and three Federal agencies (OCSE, the Treasury Department's Financial Management Service, and the Internal Revenue Service).

The Internal Revenue Code at 26 U.S.C 6402(c) does not currently allow Tribes to have direct access to the

Federal Income Tax Refund Offset process. Under current law, Tribal CSE cases may be processed under the Federal Income Tax Refund Offset Program provided there is an application to the State IV–D agency for appropriate services. In such cases, Tribes and States may negotiate arrangements under which individual applications for services would be sent to the State IV–D agency and the Tribal CSE agency would provide the State agency with the information and records necessary to process such cases for income tax refund offset. Under these negotiated arrangements, States would provide appropriate services consistent with section 454(4) of the Act. OCSE will issue instructions regarding these arrangements.

As discussed earlier in this preamble, § 309.10 proposes that, in order for a Tribe or Tribal organization to receive Tribal CSE funding, there must be at least 100 children under the age of majority as defined by Tribal law or code, in the population of the Tribe, or of the Tribe(s) authorizing a Tribal organization to operate a CSE program on their behalf, subject to the jurisdiction of the Tribal court (or courts) or administrative agency (or agencies). In paragraph (e) of § 309.65, we propose that, in the initial plan and in any plan amendment submitted as a new plan, a Tribe or Tribal organization must confirm its eligibility for direct Tribal CSE funding by certifying that, as of the date the plan or plan amendment is submitted to the Department, the Tribe or Tribal organization meets this minimum population requirement.

What provisions governing jurisdiction must a Tribe or Tribal organization include in a Tribal CSE plan? (section 309.70)

We propose that a Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes a description of the population subject to the jurisdiction of the Tribal court or administrative agency for child support enforcement purposes. As mentioned earlier, we are requiring a minimum of 100 children under the age of majority as defined by Tribal law or code in the population under the jurisdiction of the Tribe or Tribes to be served in order to apply for and receive direct funding.

What administrative and management procedures must a Tribe or Tribal organization include in a Tribal CSE plan? (section 309.75)

We propose that a Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting

the objectives of title IV–D of the Act when its Tribal plan includes the following minimum administrative and management provisions, and the Secretary or designee determines that these provisions are adequate to enable the Tribe or Tribal organization to operate an effective and efficient Tribal CSE program and otherwise comply with Federal requirements.

In paragraph (a), we propose that the plan include a description of the structure of the agency and the distribution of responsibilities within the agency. This includes the responsibility for the functions of establishing a plan, overseeing operation of the program and evaluating the efficiency and effectiveness of the program, preparing required reports and receiving, distributing, disbursing and accounting for collections. The plan should include the proposed staffing levels for delivery of necessary services, including: intake, establishing support obligations, locate, financial assessment, enforcement, distribution and collection, program management and financial management.

Many Tribes and Tribal organizations applying for grants under other programs will be familiar with the inclusion of management and administrative capacity to operate the program in their applications. This includes evidence of the Tribe's and Tribal organization's ability to operate the program. The plan will outline the management and administrative capabilities of the Tribal CSE agency, including position descriptions of key personnel and related staffing information.

In paragraph (b), we propose that a plan include procedures under which applications for Tribal CSE services are made available to the public upon request.

In paragraph (c), we propose the plan include procedures under which the Tribal CSE agency must promptly open a case by establishing a case record and determining necessary action. The purpose of this provision is to avoid a delay in getting needed services to the children.

In paragraph (d), we propose that the Tribal plan must contain procedures to control the use of and account for Federal funds and amounts collected on behalf of custodial parents, including assurances that the following requirements and criteria to bond employees are in effect:

(1) Procedures under which the Tribal CSE agency will ensure that every person, who has access to or control over funds collected under the Tribal CSE program, is covered by a bond

against loss resulting from employee dishonesty.

(2) The requirement in paragraph (d) applies to every person, who as a regular part of his or her employment, receives, disburses, handles or has access to support collections.

(3) The requirements of this section do not reduce or limit the ultimate liability of the Tribe or Tribal organization for losses of support collection from the Tribal CSE agency's program.

(4) A Tribe may comply with the requirement in paragraph (d) by means of self-bonding established under Tribal law and approved by the Secretary or designee.

In paragraph (e), we propose that the plan include procedures under which notice of the amount of any support collected for each month is provided to families receiving services under the Tribal CSE plan and to the noncustodial parent upon request. Families receiving services must receive such notice on a quarterly basis.

In paragraph (f), we propose that the plan include certification that for each year during which the Tribe or Tribal organization receives or expends funds pursuant to section 455(f) of the Act and this part, it shall comply with the provisions of chapter 75 of title 31 of the United States Code (the Single Audit Act of 1984, Public Law 98–502, as amended) and OMB Circular A–133. (The single agency audit requirements are included in the grants administration requirements at 45 CFR 92.26, which include OMB Circular A–133, “Audits of States, Local Governments, and Non-Profit Organizations.”) Tribes and Tribal organizations that receive grants from other programs are familiar with this requirement, as it pertains to most Federal grant-in-aid funding.

What safeguarding procedures must a Tribe or Tribal organization include in a Tribal CSE plan? (section 309.80)

We propose that a Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program when its Tribal CSE plan includes specific safeguarding provisions. We are proposing that Tribes and Tribal organizations be required to include in their Tribal CSE plan a description of how they propose to safeguard information collected for the purposes of their Tribal CSE program. Because of concerns raised during consultation and privacy issues concerning child support and tax information, this requirement for safeguarding information was added to protect both the Tribe's own information and data and information

and data received from other Tribes, States and the Federal government.

In proposed paragraph (a), there must be procedures under which the use or disclosure of information concerning applicants or recipients of child support enforcement services is limited to purposes directly connected with the administration of the Tribal CSE program or other programs or purposes prescribed by the Secretary.

In proposed paragraph (b), Tribal CSE safeguarding procedures must be consistent with safeguarding provisions in sections 453 and 454 of the Act and regulations promulgated pursuant to section 464 of the Act and conform to any specific rules or instructions issued by the Secretary or designee to assure that requests for and disclosure and use of information obtained from the Federal Parent Locator Service and the Federal Tax Refund Offset Program are limited only to individuals and entities authorized under these sections of the Act for the purposes authorized under these sections.

In paragraph (c), we propose that the plan include procedures under which sanctions must be imposed for the unauthorized disclosure of information concerning applicants and recipients of child support enforcement services as outlined in paragraphs (a) and (b) of this section.

What reports and maintenance of records procedures must a Tribe or Tribal organization include in a Tribal CSE plan? (section 309.85)

We propose that a Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV-D of the Act when its Tribal CSE plan includes procedures for maintaining certain records.

In proposed paragraph (a), the Tribal CSE agency would be required to maintain records necessary for proper and efficient operation of the program including:

- (1) Applications for support services;
- (2) Records on location of noncustodial parents;
- (3) Records on actions taken to establish paternity and obtain and enforce support;
- (4) Records on amounts and sources of support collections and the distribution of such collections;
- (5) Records on other costs; and
- (6) Statistical, fiscal and other records necessary for reporting and accountability required by the Secretary or designee.

In paragraph (b), we propose that the retention and custodial requirements for

these records are prescribed in 45 CFR part 92.

Maintenance of records is an important aspect in running a child support program and accountability to the Federal government and those receiving services. The requirement to maintain these records will enhance the program, in that reporting will be easier and the Tribal CSE agency will be able to track the progress and growth of the program.

What governing Tribal law or regulations must a Tribe or Tribal organization include in a Tribal CSE plan? (section 309.90)

We propose that a Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV-D of the Act when its Tribal CSE plan includes copies of Tribal law, code, regulations, and/or other evidence that provides the following specific procedures:

In paragraph (a), we propose that the plan include procedures that result in the establishment of paternity for any child up to and including at least 18 years of age.

Age 18 is used only in terms of establishing a child support order. This has no bearing on Tribal enrollment, Tribal membership or Tribal rights. This imposes no Federal requirement relating to Tribal membership.

In paragraph (b), we propose that the plan include procedures that result in establishment and modification of child support obligations.

In paragraph (c), we propose that the plan include procedures that result in the enforcement of child support obligations, including requirements that Tribal employers comply with income withholding as required under § 309.110.

In paragraph (d), we propose that the plan include procedures that result in location of noncustodial parents.

In the absence of specific laws and regulations, a Tribe or Tribal organization may satisfy this requirement by providing in its plan detailed descriptions of such procedures which the Secretary or designee determines are adequate to enable the Tribe or Tribal organization to meet the performance targets approved by the Secretary.

We understand that some Tribes may not have written laws in these areas. In that case, the Tribe must include in its plan a written description of the procedures and criteria it employs to establish paternity, establish and modify support orders, or to enforce support obligations. During consultation, questions concerning specific State

enforcement techniques were raised. A Tribe or Tribal organization is not prohibited from using all or some of the enforcement tools that States are required to use. However, some of these may not be appropriate enforcement tools for Tribes and Tribal organizations, especially for CSE programs that are in the early stages of development.

One example is license revocation for enforcement of support orders. This includes driver's, professional, occupational, and recreational licenses of individuals who owe overdue support, or who fail to comply with subpoenas or warrants relating to paternity or support proceedings. We are aware that not all Tribes issue licenses of the type a State is required to revoke. We do not have a comprehensive list of licenses issued by each Tribe. Therefore, the use/application of this technique is left to the discretion of the Tribe or Tribal organization. This is a fairly new requirement for State programs, and we have elected not to require it in the NPRM because Tribal CSE programs are in the early stages of development.

However, one specific enforcement technique is required for Tribal CSE programs: income withholding as described in § 309.110 and discussed later in this preamble. Income withholding is deemed critical to successful child support enforcement efforts and accounts for over 50 percent of all collections in State IV-D programs.

Some enforcement techniques that a Tribe or Tribal organization may wish to use will require the cooperation of a State. For example, States are required to revoke certain professional licenses if a parent is overdue on his or her support obligation. Some of these licenses may be issued by a State. If a Tribe or Tribal organization wants to use this tool, it must request that the State revoke the license.

Many enforcement requirements were added to State IV-D programs over time, including requirements for State tax refund offset and for reporting child support arrearages to credit bureaus. We will provide information to Tribal CSE programs on enforcement tools currently available. These tools provide increased potential for enforcing support orders and are often helpful in the most egregious cases of unpaid support. While we do not expect Tribes to use all available tools immediately, we would strongly encourage Tribes to consider an array of enforcement mechanisms to best serve their families and expect more use as Tribes gain experience.

This proposed rule requires that Tribal plans explain how the Tribe or Tribal organization will carry out specific CSE requirements, including the enforcement tools the Tribe or organization will use, as well as requiring use of income withholding. We will provide information and technical assistance to Tribal programs on use of additional enforcement tools.

We are requesting copies of all Tribal laws and regulations that outline the specific procedures for establishment of paternity; establishing and modifying child support obligations; enforcing child support obligations and locating noncustodial parents. The Tribal plan must contain enough information so that the Secretary can determine that appropriate Tribal laws, regulations and procedures are in place to ensure paternity and support order establishment and enforcement of support obligations as required under section 455(f) of the Act and these regulations.

What procedures governing the location of noncustodial parents must a Tribe or Tribal organization include in a Tribal CSE plan? (section 309.95)

We propose that a Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes the following provisions governing the location of noncustodial parents.

Under proposed paragraph (a), in all appropriate cases, the Tribal CSE agency must attempt to locate noncustodial parents or sources of income and/or assets when location is required to take necessary action in a case.

Under proposed paragraph (b), all sources of information and records available to the Tribe or Tribal organization must be used to locate noncustodial parents. As defined in § 309.05, location means the information concerning the physical whereabouts of the noncustodial parent, or the noncustodial parent's employer(s), or other source of income or assets, as appropriate, which is sufficient and necessary to take the next appropriate action in a case.

A Tribe or Tribal organization may wish to establish a Parent Locator Service, similar to the Parent Locator Services established by States. The locator service may utilize a variety of sources, ranging from manual to electronic processes for location of a noncustodial parent. These tools may include: Local officials and employees administering public assistance, general assistance, medical assistance, food stamps and social services; relatives and

friends of the noncustodial parent; current or past employers; the local telephone company; the U.S. Postal Service; financial references; unions; fraternal organizations; police, parole, and probation records if appropriate; and State agencies and departments, as authorized by State law, including those departments which maintain records of public assistance, wages and employment, unemployment insurance, income taxation, driver's licenses, vehicle registration, and criminal records and other sources, as appropriate.

What procedures for the establishment of paternity must a Tribe or Tribal organization include in a Tribal CSE plan? (section 309.100)

In paragraph (a), we propose that a Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes the procedures for the establishment of paternity included in this section. In cases in which paternity has not been established, the Tribe must include in its Tribal CSE plan the procedures under which the Tribal CSE agency will:

- (1) Attempt to establish paternity by the process established under Tribal law, code and/or custom; and
- (2) Provide an alleged father the opportunity to voluntarily acknowledge paternity.

We will examine the Tribe's procedures to ensure that the objectives of title IV–D are met, paternity is established, due process rights are protected, and the children in need of child support services receive those services consistent with the requirements of these regulations.

In paragraph (b), we propose that the Tribal CSE agency need not attempt to establish paternity in any case involving incest or forcible rape, or in any case in which legal proceedings for adoption are pending, if, in the opinion of the Tribal CSE agency, it would not be in the best interests of the child to establish paternity in this case.

In paragraph (c), we propose that when genetic testing is used to establish paternity, the Tribal CSE agency must identify and use accredited laboratories which perform, at reasonable cost, legally and medically acceptable genetic tests which tend to identify the father or exclude the alleged father.

The proposed requirements in paragraphs (b) and (c) are based on similar requirements for State IV–D agencies.

During consultation with Tribes, the issue of establishing paternity was

troublesome for a number of reasons. Some Tribes do not use the methods of establishing paternity that are widely used in State programs. In some instances, Tribal leaders establish paternity. Concerns were raised about religious and ethical objections to genetic testing for establishing paternity, and about using non-Tribal laboratories for genetic testing. In some Tribes, the question of paternity is not as important, because the Tribes are matrilineal. In others, paternity may enter into issues concerning Tribal membership and other rights and entitlements. We are generally providing Tribal CSE agencies discretion on how to establish paternity.

We believe that current genetic testing technology provides the most accurate means to determine the father or exclude the alleged father, and that involved individuals therefore should have the opportunity to request use of this technology. We also believe that an alleged father who questions whether he is the father of a child will be more likely to accept the child as his if genetic testing determines that he is the father.

We believe that recent advances in genetic testing technology address concerns that some may have about this method. Genetic testing is now painless and minimally invasive. Swabs are used to obtain cells from the inside cheek surface; blood is not drawn. There are highly accurate results based on comparison of DNA from the child, the mother, and the alleged father.

As noted, we propose to require use of accredited laboratories when genetic testing is used, to assure the most accurate results possible. Tribes should put safeguards in place to assure that genetic (or blood) samples are used only as directed by the Tribe. In their agreements with the accredited laboratories they choose, they can require that all samples must be used only for the specified paternity establishment and must be destroyed within a specified period of time. They also can use tribally-owned accredited laboratories.

We request comments regarding paternity establishment, including specific comments concerning the best way to assure due process for involved individuals while respecting Tribal tradition.

What procedures governing guidelines for the establishment and modification of child support obligations must a Tribe or Tribal organization include in a Tribal CSE plan? (section 309.105)

In paragraph (a), we propose that a Tribe or Tribal organization

demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes the requirements listed below.

(1) Establishes one set of child support guidelines by law or by judicial or administrative action for setting and modifying child support obligation amounts;

(2) Includes a copy of child support guidelines governing the establishment and modification of child support obligations; and

(3) Indicates whether in-kind or non-cash payments of support will be permitted and if so, describes the type(s) of in-kind (non-cash) support that will be permitted and how such in-kind (non-cash) payments will be converted into cash equivalents if necessary.

The plan must describe how the Tribe or Tribal organization will determine a support amount and establish a support order. It must describe any Tribal provisions for in-kind support payments; the process to track in-kind support payments; and the process for translating the in-kind amount to a dollar amount, should the obligor move and services are no longer provided by the Tribal CSE agency.

During consultation, Tribes stressed repeatedly that it may be economically and culturally acceptable for noncustodial parents to provide in-kind child support. Examples of in-kind child support include, but are not limited to, child care, game (e.g., deer or fish from hunting and fishing), firewood, or time spent with the child teaching him or her traditional and cultural ways. A variety of in-kind options are allowable at the Tribe or Tribal organization's discretion.

In paragraph (b), we propose that the guidelines established under paragraph (a) at a minimum must: (1) Take into account the needs of the child and the earnings of the noncustodial parent; and (2) be based on specific descriptive and numeric criteria and result in a computation of the support obligation.

As mentioned above, the child support guidelines are guidelines established by law or judicial or administrative action. The purpose of the guidelines is to establish child support orders based upon the financial circumstances of the noncustodial parent and the needs of the child. Use of the guidelines is required for establishing child support obligations. The "specific descriptive criteria" must include consideration of the noncustodial parent's earnings and the child's needs, and may include consideration of such things as the custodial parent's earnings, credit for

child care expenses; medical expenses; seasonal employment of the noncustodial parent; and any other appropriate criteria.

In paragraph (c), we propose that the Tribe or Tribal organization must ensure that child support guidelines are reviewed at least every three years.

In paragraph (d), we propose that the Tribe or Tribal organization must provide that there shall be a rebuttable presumption, in any judicial or administrative proceeding for the award of child support, that the amount of the award which would result from the application of the guidelines established under paragraph (a) of this section is the correct amount of child support to be awarded.

In paragraph (e), we propose that a written finding or specific finding on the record of a judicial or administrative proceeding for the award of child support that the application of the guidelines established under paragraph (a) of this section would be unjust or inappropriate in a particular case shall be sufficient to rebut the presumption in that case, as determined under criteria established by the Tribe or Tribal organization. Such criteria must take into consideration the best interests of the child. Findings that rebut the guidelines shall state the amount of support that would have been required under the guidelines and include a justification of why the order varies from the guidelines. In the interest of flexibility for Tribal CSE programs and comparability with State IV–D requirements, we included the provision for deviation from the established child support guidelines.

What procedures governing income withholding must a Tribe or Tribal organization include in a Tribal CSE plan? (section 309.110)

In proposed paragraph (a), a Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes copies of Tribal laws providing for the following income withholding requirements.

(1) In the case of each noncustodial parent against whom a support order is or has been issued or modified under the Tribal CSE plan, or is being enforced under such plan, so much of his or her income as defined in section 466(b)(8) of the Act must be withheld as is necessary to comply with the order.

Income is defined in section 466(b)(8) of the Act as " * * any periodic form of payment due to an individual, regardless of source, including wages, salaries, commissions, bonuses,

worker's compensation, disability, payments pursuant to a pension or retirement program, and interest." Tribes may add other elements to this definition of income for the purposes of income withholding. Tribes may want to include allotment payments in the definition of income for withholding purposes. Tribes may also want to define winnings from gaming as income subject to withholding. Tribes have the discretion to determine whether to include winnings from gaming, allotment payments and other additional sources of income in the definition of income.

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

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

The provision of the Consumer Credit Protection Act (CCPA) at 15 U.S.C. 1673(b) sets outside limitations on amounts that may be withheld for child support enforcement purposes. If an employee is supporting his/her spouse or dependent child, other than a spouse or child referenced in the income withholding order, 50 percent of disposable earnings may be withheld. If the employee is not supporting such a spouse or dependent child, 60 percent of the disposable earnings may be withheld. These limits increase to 55 percent and 65 percent if the employee is 12 or more weeks in arrears.

A Tribe or Tribal organization may wish to set different limits. The limit set by a Tribe or Tribal organization may be lower, but may not be higher than the limit set forth in the CCPA. Some States have opted for lower limits, such as 50 percent, on income withholdings.

(4) All income withholding must be carried out in compliance with all procedural due process requirements of the Tribe or Tribal organization.

(5) The Tribal CSE agency must have procedures for promptly refunding amounts, which have been improperly withheld.

This provision protects the noncustodial parent from incorrect or inaccurate withholdings that could occur, and ensures that procedures are in place to refund amounts which have been improperly withheld.

(6) The Tribal CSE agency must have procedures for promptly terminating income withholding in cases where there is no longer a current order for

support and all arrearages have been satisfied.

In paragraph (b), we propose that to initiate income withholding, the Tribal CSE agency must send the noncustodial parent's employer a notice using the standard Federal format that includes the information listed below.

(1) The amount to be withheld.

(2) A requirement that the employer must send the amount to the Tribal CSE agency within 7 business days of the date the noncustodial parent is paid.

(3) That the employer must report to the Tribal CSE agency the date on which the amount was withheld from the noncustodial parent's income.

(4) A requirement that, in addition to the amount to be withheld for support, the employer may deduct a fee established by the Tribe for the employer's administrative costs incurred for each withholding, if the Tribe permits a fee to be deducted.

(5) A requirement that the withholding is binding upon the employer until further notice by the Tribe.

(6) A requirement that if the employer fails to withhold income in accordance with the provision of the notice, the employer is liable for the accumulated amount the employer should have withheld from the noncustodial parent's income.

(7) A requirement that the employer must notify the Tribe promptly when the noncustodial parent terminates employment and provide the noncustodial parent's last known address and the name and address of the noncustodial parent's new employer, if known.

The form Order/Notice to Withhold Income for Child Support (OMB No. 0970-0154) is required in all IV-D cases and in private cases established after January 1, 1994 for income withholding. The form includes basic identifying information, what amount needs to be withheld, and where payments must be remitted.

In paragraph (c), we propose that the income of the noncustodial parent shall become subject to withholding, at the latest, on the date on which the payments which the noncustodial parent has failed to make under a support order are at least equal to the support payable for one month.

In the State IV-D program, there are provisions for immediate income withholding. This means that the income withholding is mandatory when the noncustodial parent is employed. We contemplated using this same provision for the Tribal CSE program, but we were concerned that it would be difficult for Tribes and Tribal

organizations operating a program to meet such a requirement in all cases. For that reason, we are specifically soliciting comments on this aspect of income withholding.

In paragraph (d), we propose that the only basis for contesting a withholding is a mistake of fact, which for purposes of this section means an error in the amount of current or overdue support or in the identity of the alleged noncustodial parent.

In paragraph (e), we propose that the provisions of this section do not apply to that portion of a support obligation that may be satisfied in kind.

In paragraph (f), we propose that Tribal law must provide that the employer is subject to a fine to be determined under Tribal law for discharging a noncustodial parent from employment, refusing to employ, or taking disciplinary action against any noncustodial parent because of the withholding.

Income withholding is the single most effective tool for collecting child support from noncustodial parents. Income withholding provides a steady income stream to the custodial parent. This procedure accounted for 55.8 percent of all collections made in FY 1998. We believe that Tribes will find that this is a very effective tool for child support enforcement.

What procedures governing the distribution of child support must a Tribe or Tribal organization include in a Tribal CSE plan? (section 309.115)

We propose that a Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV-D of the Act when its Tribal plan includes the provisions listed below.

Under proposed paragraph (a), in cases where families receiving services from the Tribal CSE program are receiving TANF assistance from the State, collected child support must be distributed consistent with section 457(a)(1) of the Act.

Under proposed paragraph (b), in cases where families receiving services from the Tribal CSE program are receiving TANF assistance from a Tribal TANF program and formerly received assistance under a State program funded under title IV-A, child support arrearage collections must be distributed consistent with section 457(a)(2) of the Act.

Under paragraph (c), in cases where families receiving services from the Tribal CSE program are receiving TANF assistance from a Tribal TANF program and have assigned their rights to child support to the Tribe, collected child

support up to the amount of Tribal TANF assistance received by the family may be retained by the Tribe. Thus, in distributing support collected on behalf of a family who has assigned support rights to the Tribe, the Tribe would have the option of retaining such support for reimbursement of Tribal TANF benefits or of passing through support collected in whole or in part to the family to help the family move to self-sufficiency. However, as specified under 45 CFR 286.155(b)(1) of the Tribal TANF rules, any collected child support in excess of the amount of Tribal TANF assistance received by the family must be paid to the family.

Under proposed paragraph (d), in cases where families receiving services from the Tribal CSE program formerly assigned support rights to the Tribe as a condition of receiving Tribal TANF assistance, the Tribe may retain amounts collected above current support as reimbursement for past assistance payments made to the family for which the Tribe has not been reimbursed. While this is a Tribal option, we would urge Tribes to consider the benefit of passing all support collected to families that are no longer receiving Tribal TANF as a vehicle for maintaining self-sufficiency.

A Tribe could not retain collections under this paragraph until all current support was paid to the family. As under paragraph (c), any collected child support in excess of the amount of unreimbursed Tribal TANF assistance must be paid to the family.

With respect to paragraphs (c) and (d), in developing proposed policy, we are considering requiring Tribes to distribute retained collections to the Tribe and the Federal government for reimbursement of the cost of providing assistance (similar to paragraphs (a) and (b) when there is an assignment to the State) at a 90/10 match rate (reflecting the general rate of cost-sharing). An alternative would have been to allow the Tribe to retain all collections or a greater proportion of the collections, but this approach raised significant issues as well. In addressing this policy, we ask commenters to consider the range of complex issues involved in distribution in these cases, including the following: Given the lack of statutory guidance in this area, is there a justifiable alternative to the 90/10 rate? How would distribution work when a Tribal order was based on in-kind support by the noncustodial parent? We encourage your comments on this approach to distribution policy and the number of complex issues needing to be addressed. We are also interested in learning more about the potential impact on families

and on Tribes with respect to any of these issues.

Under proposed paragraph (e), in cases where families receiving services from the Tribal CSE program never received assistance under a State or Tribal program funded under title IV–A, all collected child support must be paid to the family.

Concerns were raised during the consultations with respect to distribution of child support collections. OCSE has addressed these concerns in Action Transmittal OCSE–98–21, dated July 28, 1998. Title IV–D contains explicit requirements for distribution of support collected, including support assigned to a State under title IV–A of the Act. In cases where Indian families are receiving TANF assistance under title IV–A from the State, support must be distributed pursuant to section 457(a)(1) of the Act. The Tribal CSE agency must forward all collections to the State IV–D agency. The State must pay to the Federal government the Federal share of the amount collected and may retain or distribute to the family the State share of the amount collected.

However, if as a condition of eligibility for Tribal TANF, an Indian applicant assigns his/her right to support to the Tribe, such an assignment may be honored by a State IV–D program providing services to the Tribal TANF family and support collected distributed accordingly, to the Tribal TANF agency. However, there is nothing under Federal law that mandates a State honor a request by a custodial parent to send support collected to anyone other than the custodial parent. Should assignments exist to both the Tribe and State because of current and/or past assistance under title IV–A being provided to the family, amounts collected must be distributed in a way that is consistent with section 457 of the Act and these regulations.

In cases where Indian families never received title IV–A assistance, all collected support must be paid to the family, consistent with section 457(a)(3) of the Act.

What intergovernmental procedures must a Tribe or Tribal organization include in a Tribal CSE plan? (section 309.120)

We propose that a Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes those items listed below.

In paragraph (a), we propose the plan include procedures that provide that the Tribal CSE agency will cooperate with

States and other Tribal CSE agencies to provide CSE services in accordance with instructions and requirements issued by the Secretary or designee.

In paragraph (b), we propose the plan include assurances that the Tribe or Tribal organization will recognize child support orders issued by other Tribes and Tribal organizations, and by States, in accordance with the requirements under 28 U.S.C. 1738B, the Full Faith and Credit for Child Support Orders Act.

As discussed earlier in the preamble, under the Full Faith and Credit for Child Support Orders Act, States are required to reciprocate and recognize Tribal orders. In addition, all States have enacted the Uniform Interstate Family Support Act (UIFSA). This model statute provides that, as a matter of State law, States will treat Indian Tribes in the same manner as they treat other States when handling child support cases involving other jurisdictions. OCSE is developing regulations to specifically address the issue of State cooperation with Tribal CSE programs, possibly as part of the revisions to the regulations at 45 CFR 302.36, Provision of Services in Interstate IV–D Cases.

We considered adding a requirement that Tribes enact the UIFSA or similar legislation. However, we were reluctant to impose a requirement with the specificity contained in UIFSA. We are specifically soliciting comments on whether this model statute or similar model legislation written specifically for Tribes would be helpful.

We will be working with Tribes and States to determine the appropriate requirements for cooperation between Tribes and States. We will also be working to identify technical assistance to ensure child support services for children whose parents live on or off Tribal land. The intent is to ensure that both States and Tribes are covered by requirements as appropriate. The Secretary or designee will issue additional guidance.

Subpart D–Tribal CSE Program Funding

On what basis is Federal funding in Tribal CSE programs determined? (section 309.125)

We propose that Federal funding of Tribal CSE programs be based on information contained in the Tribal CSE application, which includes a proposed budget, a description of the nature and scope of the Tribal CSE program and assurance that the program will be administered in conformity with applicable requirements of title IV–D, regulations contained in this part and

other official issuances of the Department.

How will Tribal CSE programs be funded? (section 309.130)

In paragraph (a), we propose that Tribal CSE programs generally will be funded on an annual basis. A Tribe or Tribal organization running a Tribal CSE program will receive a grant at the beginning of that Tribe or Tribal organization's program year or budget period in the amount of the approved Federal share, to fund the Tribe or Tribal organization's program for the next 12 months. (As noted in subpart B, a Tribal CSE agency must have submitted an application, including a Tribal CSE plan and application forms, and the Department must have approved that application in order for a Tribal CSE agency to be eligible for direct funding.) In this discussion, we use the term "program" to include those activities associated with putting a Tribal CSE program in place, for example, "start-up costs," as well as those activities associated with running a fully functional CSE program.

We want to give a Tribe or Tribal organization as much flexibility as possible in selecting the 12-month funding cycle that is easiest for it to administer. We also want a Tribe or Tribal organization to be able to submit its initial application at any time that it is ready to do so, irrespective of its preferred funding cycle.

In order to make that possible, paragraph (b) proposes a special provision for an initial grant. We propose that a Tribe or Tribal organization may request that its initial Tribal CSE grant award be for a period of less than a year (but at least six months) or more than a year (but not to exceed 17 months) to enable the Tribe's CSE program funding cycle to coincide with the Tribe's desired annual funding.

For example, a Tribe or Tribal organization whose fiscal year runs from July 1 to June 30 may want its CSE program funding cycle to coincide with its fiscal year. However, the Tribe or Tribal organization may be ready to start its program on February 1. In that case, we could issue the initial grant award to allow the Tribe or Tribal organization to begin its program on February 1, after the Secretary approves the Tribe or Tribal organization's funding application. That initial grant period would run from February 1 of the current year to June 30 of the following year, that is, for 17 months. For the years after this first budget period, funding would be on a 12-month basis, from July 1 to June 30 for this Tribe or Tribal organization.

During the consultation process, we received many questions about how the funding level for each Tribe would be set, what formula would be used, whether we would be making per capita grants, whether Tribes and States would have to negotiate Tribal funding levels, etc.

In paragraph (c), we propose that the Secretary or designee will determine the amount of funds that a Tribe or Tribal organization needs for reasonable, necessary and allocable costs to operate its Tribal CSE program based on information supplied by the Tribe or Tribal organization on Standard Form 424 (Application for Federal Assistance), Standard Form 424A (Budget Information—Non-Construction Programs), and the Tribe or Tribal organization's CSE plan, as reviewed and approved by the Secretary or designee. Forms 424 and 424A are part of the initial application, as well as part of annual refunding applications.

Unlike many other ACF Tribal programs, the Tribal CSE program does not have a statutory funding formula or a specific or fixed amount to be set aside for Tribal CSE grants. Instead, as is the case for approved State CSE programs, funding is available as needed in order to pay reasonable and necessary costs of operating approved Tribal CSE programs.

Also, unlike the funding for many other ACF Tribal programs, the funding for Tribal CSE activities is completely separate from funding for State programs. Thus, a Tribe's decision to run its own CSE program does not impact a State's CSE program funds. Tribal CSE funding is not apportioned from a State's funding.

We considered a number of funding options for this NPRM. For example, we considered basing funding on the Tribe or Tribal organization's performance in collecting child support and cost effectiveness in administering a CSE program. We also contemplated basing funding on cost per child to operate a child support enforcement program. However, given that the vast majority of Tribes will be developing new programs, we do not yet have adequate information or experience to determine appropriate performance and cost effectiveness standards.

We considered setting a cap on certain costs within the Tribal CSE programs. We discussed setting a cap on indirect costs that could be paid from the CSE grant funds. However, indirect cost rates should be implemented as negotiated. We considered setting a cap on court costs, but because of our limited knowledge of Tribal court costs and the difference among Tribal courts,

we decided this would not be appropriate at this time. We considered determining the amount of Tribal funding based on State IV-D expenditures. We concluded that costs for State programs that have been operating for over twenty years, and costs for new Tribal programs for Tribes of varying sizes and circumstances, are not directly comparable.

After considering many options, we decided to propose a 90/10 funding formula for the first three years of operation of a full Tribal CSE program under § 309.65(a) encompassing a matching requirement to ensure that Tribes and Tribal organizations have a stake in their CSE programs. Therefore, § 309.130(d)(1) proposes that during the first 3 years of operation of a full Tribal CSE program under § 309.65(a), HHS provide an amount not to exceed 90 percent of the total approved budget of the CSE program described in a Tribe or Tribal organization's approved application, and that the Tribe or Tribal organization must provide a non-Federal matching share of at least 10 percent of the total approved budget of the assisted program, in cash and/or in kind, in accordance with the requirements of 45 CFR part 92. Tribal grantees may provide a non-Federal (Tribal) share of greater than 10 percent of the costs of their CSE programs, at their option. After three years, the matching rate for the Federal government would be 80 percent and 20 percent for the Tribe. However, if the Secretary determines based on experience and consultation with Tribes that the 80/20 match rate is disruptive to the program and imposes hardship to Tribes, the regulations will be revised accordingly.

States are required to provide a 34 percent cash match to the Federal 66 percent, in their CSE programs. Given the economic conditions and lack of a tax base for most Tribes, we are aware that a 34 percent match would be unreasonable for Tribes and Tribal organizations.

At the option of the Tribe or Tribal organization, the non-Federal match may be in cash and/or in kind. An example of a countable monetary match would be Tribal funds used to pay the salaries of staff operating the Tribal CSE program. An example of a countable in-kind match would be the fair value of tribally owned office space used for the Tribe's CSE program. Proposed paragraph (d)(1) also provides that bona fide third-party donated funds and in-kind contributions valued at fair market value may satisfy a Tribe or Tribal organization's non-Federal share requirement. For example, third-party

donations of supplies and equipment used for allowable purposes in the Tribal CSE program generally could count as a match. However, "donations" that are quid pro quo or in consideration for Tribal actions, or that primarily benefit the donor, cannot be used to satisfy the requirement. For example, if a vendor agreed to donate funds or discount the cost of supplies, equipment and/or services to a Tribe if the vendor received a contract from the Tribe, this "donation" could not be used to satisfy the non-Federal share requirement.

To count as matching in a Tribal CSE program, expenditures must be allowable and cannot be claimed for matching in another Federal program or in another entity's CSE program.

In general, Federal funds cannot be used to satisfy the non-Federal share requirement. For example, services, such as technical assistance, provided to or by a Tribe would not be countable if Federal funds were used to pay for these services—to pay the person(s) who provided the services or to pay other costs associated with the services. As another example, a Tribe could not count as its matching requirement the value of an item donated by a State to the Tribe, if the State used Federal funds to purchase the item (in other words, if the State had claimed Federal financial participation for the same item under its CSE program).

However, there are limited circumstances under which funds from other Federal programs may be used as matching funds. Grantees may use funds from another Federal program only if the statute(s) applicable to that program permit their use to meet non-Federal matching requirements in other programs, the purposes of the two programs are consistent, and the funds have not been used to meet non-Federal matching requirements under any other Federal program(s). For example, a Tribe could not count Public Law 93-638 funds as matching funds in its Tribal CSE program if the purposes of the child support program and the program funded by the Public Law 93-638 funds were not consistent and/or if the Tribe was counting these funds as matching in another program.

We believe that some Tribes may not have sufficient resources to provide a 10 percent or 20 percent non-Federal matching share. Paragraph (d)(2) therefore proposes circumstances under which HHS would waive part or all of the matching requirement. A Tribe or Tribal organization that lacks sufficient resources to provide a 10 or 20 percent match would submit a waiver request that includes: (1) A statement that it lacks the available resources to meet the

matching requirement; (2) a statement of the amount of the non-Federal share that it requests HHS to waive; (3) the reasons that substantiate why it is unable to meet the matching requirement; and (4) documentation that reasonable efforts to obtain the non-Federal share have been unsuccessful. Evidence of such efforts might include letters from possible sources of funding indicating that the requested resources are not available for this purpose, or approval of similar waivers of non-Federal share requirements in other Federal programs such as Head Start. When evaluating waiver requests from Tribal organizations, HHS will consider the resources of the organization as well as the resources of the Tribes on whose behalf the organization is administering the child support program. HHS could require more information and documentation as it determines necessary.

HHS would waive all or part of the non-Federal matching share, as appropriate, if it determines that a waiver request meets the conditions stated above. A waiver request would be submitted as part of the application for Tribal CSE funding, and waivers would be granted for the budget period for which the application is made. Waiver requests also could be submitted with budget amendment requests.

These non-Federal share matching and waiver provisions are modeled after similar provisions for the Administration for Native Americans and Head Start.

We are specifically seeking comments on our approach to the funding of Tribal CSE programs, including the proposed matching requirement.

In paragraph (e), we propose that a Tribal CSE grantee may request an adjustment to increase the approved level of its current budget by submitting Standard Form 424 (Application for Federal Assistance) and SF 424A (Budget Information—Non-Construction Programs), and explaining why it needs to increase its budget. The Tribe or Tribal organization should submit this request at least 60 days before additional funds are needed, in order to allow the Secretary or designee adequate time to review the estimates and issue a revised grant award as appropriate. Requests for changes to budget levels are subject to approval by the Secretary or designee. If the change in a grantee's budget estimate results from a change in the grantee's CSE plan, the grantee also needs to submit a plan amendment, in accordance with § 309.25(c) of this part, with its request for additional funding. The Secretary or designee will review the grantee's

request, ask for additional information as necessary, and negotiate any appropriate adjustments with the grantee. The Secretary or designee must approve the plan amendment before approving additional funding.

The circumstances under which a Tribe or Tribal organization needs to send an application or plan amendment to OCSE are summarized below.

Initial Application: This will contain the SF 424—Application for Federal Assistance and SF 424A—Budget Information—Non-Construction Programs, plus the Tribal CSE agency's plan, as described in § 309.15 of these proposed rules. Tribal CSE agencies may submit the initial application at any time. The Tribal CSE agency will need to indicate on its initial application what 12-month budget period it prefers. The budget estimate for the initial application should be for a period ranging from six to 17 months, such that the end of the initial budget period is the same as the end of the Tribal CSE agency's preferred budget period. (An example of how this works was presented earlier in this preamble.)

Annual Refunding Application: The refunding application normally will contain only the SF 424—Application for Federal Assistance and SF 424A—Budget Information—Non-Construction Programs, unless the Tribal CSE agency is making changes to its plan or receives funding for start-up costs. If the Tribal CSE agency wants to make changes to its plan, it needs to submit those changes also, in a plan amendment. If it receives funding for start-up costs, it needs to include a program progress report on its CSE program activities and accomplishments during the current budget period. The refunding application is due to OCSE 60 days before the end of the Tribal CSE agency's current budget period. For example, if the Tribal CSE agency's initial grant expires on June 30, 2001, then the Tribal CSE agency should submit its refunding application for the period July 1, 2001 to June 30, 2002 to OCSE no later than April 30, 2001.

Application for Additional Funds, with Plan Amendment: A Tribal CSE agency should submit an as-needed application when it wants to make changes to its approved CSE plan during a budget period, and these changes result in a need for additional CSE funds during the budget period. These as-needed applications requesting a plan amendment and additional funds will contain: An SF-424—Application for Federal Assistance and an SF-424A—Budget Information—Non-Construction Programs reflecting the Tribal CSE agency's revised budget request for the current budget period; the plan amendment; and an explanation of the reasons the Tribal CSE agency needs the increase in funding. They should be submitted at least 60 days before the Tribe needs the additional funds.

Application for Additional Funds (without Plan Amendment): A Tribal CSE agency should submit an as-needed application when it identifies a need to change its current grant amount but does not need to change its plan. These as-needed

applications requesting additional funds will contain an SF 424—Application for Federal Assistance, and an SF 424A—Budget Information—Non-Construction Programs, reflecting the Tribal CSE agency's revised budget request for the current budget period; and an explanation of the reasons the Tribal CSE agency needs the increase in funding. They should be submitted at least 60 days before the Tribal CSE agency needs the additional funds.

Plan Amendment (without Application for Additional Funds): As noted earlier in this preamble, if a Tribal CSE agency wants to change its plan without adjusting the grant amount, it should submit its plan amendment request when the change takes place, or in anticipation of the change.

Under paragraph (f), we propose that Tribes and Tribal organizations will obtain Federal funds by drawing them down from the Department's Payment Management System. The draw down of Federal grant funds is subject to the provisions of 45 CFR 92.20 and 92.21.

During consultation with Tribes, issues relating to access to grant funds were of major concern. Several participants in the consultation process expressed the desire that Tribes receive funding for Tribal CSE programs pursuant to Public Law 103-413, the Indian Self-Determination Act Amendments of 1994, which amends Public Law 93-638, the Indian Self-Determination and Education Assistance Act. Basically, this would allow a Tribal CSE agency to receive a lump sum payment at the beginning of the budget period by drawing down the entire funding amount from the U.S. Treasury soon after issuance of the grant award. This would allow a Tribal CSE agency to earn interest on the funds until it used them later for allowable costs under the funding award. However, Public Law 93-638 is applicable to certain Department of the Interior and Indian Health Service programs. It is not applicable to ACF grant programs, including the Tribal CSE program.

Like many other ACF grant programs, the Tribal CSE program is subject to the grant administrative regulations in 45 CFR part 92. This requirement is set forth in proposed paragraph (g). Grantee cash management practices are governed by the regulations at 45 CFR 92.20 and 92.21, which require that grantees minimize the time between when the grantee draws funds from the Treasury and the time when the grantee actually disburses funds for approved program purposes.

In practice, this would work as follows. If a Tribal CSE agency will need funds to cover, for example, a payroll or a payment to a contractor, it will contact the Department's Payment Management

System (PMS) several days before it needs to make the payment. PMS will electronically transfer the funds the Tribal CSE agency needs to make this payment directly to the Tribal CSE agency's bank. The Tribal CSE agency then makes the payment; for example, it issues payroll checks or sends a check to its contractor.

Another concern was delays in issuing grants at the beginning of a fiscal year. This often occurs when Congress fails to enact an appropriation and instead enacts a continuing resolution. This should not be a problem for Tribal CSE grants. Congress appropriates funds for CSE activities, including Tribal CSE activities carried out under section 455(f) of the Act, in the "Children and Families Services" appropriation account. This account is unique in that the appropriation usually provides funds not just for the current fiscal year, but also an "advance appropriation" for the first quarter of the next fiscal year. For example, the CSE appropriation for FY 1999 also made funds available for the first quarter of FY 2000. This means that OCSE will be able to make child support funding payments at the beginning of a fiscal year, even in the absence of a regular appropriation (for example, under a "continuing resolution"). Also, this proposed rule allows a Tribal CSE agency to elect its own funding period. Many Tribes have a July 1 to June 30 fiscal year and we expect many Tribes will elect to receive funds on that basis.

Providing the appropriate level of automation is essential to the success of Tribal Child Support Enforcement programs. However, OCSE's experience with State system development efforts has indicated clearly the difficulty in developing such systems. In particular, the costs of developing automated CSE systems and the risk of failure in systems development efforts warrant careful planning by grantees and close oversight by OCSE.

States are required by statute to have comprehensive Statewide automated systems encompassing virtually every facet of their child support programs. Such a requirement does not exist in statute for Tribes, nor are we proposing to specify by regulation a specific level of automation that each Tribal CSE program must have. Rather, we are proposing to allow Tribal CSE grantees to acquire a level of automation which makes sense for their individual programs and which can be cost-justified. OCSE anticipates that the appropriate level of automation will vary considerably from program to program. For some larger Tribal CSE programs, a high level of automation,

approaching that of Statewide automated CSE systems, may be appropriate and cost-justifiable.

For other Tribes, the automation of only some processes in their program may be the most appropriate and justifiable level of automation.

Because OCSE is not proposing to regulate what aspects of a Tribe's CSE program must be automated, these proposed regulations do not contain a certification requirement. Instead, OCSE is proposing that each Tribe determine what functions need to be automated in order to enable the Tribe to have an effective CSE program and to determine what enhancements to this basic functionality would be cost-beneficial. (However, OCSE reserves the right to review a Tribal CSE agency's automation efforts to determine whether they followed the approved budget and whether those efforts were effective.) OCSE is especially interested in receiving suggestions regarding whether it should mandate certain automation requirements for Tribal child support enforcement programs.

For Tribes seeking to make relatively small investments in automation, OCSE believes that it can exercise an appropriate level of oversight through the budget review and grant-making processes described in subpart D of this NPRM. Tribes that seek to acquire ADP hardware, software or ADP-related services will be required to identify those items in their budget requests submitted with their applications or amendments.

However, OCSE is seeking comments on the appropriate way to provide oversight and to foster the success of larger investments in automation, especially those that involve the development of new ADP systems. OCSE is seeking to strike a balance between an appropriate level of oversight, the size of Tribal systems efforts, and administrative burden. OCSE is hampered in this by its lack of experience in Tribal systems projects and is therefore seeking comments on the best way to structure regulations in this area.

One possibility is to model those regulations on those used for States or to incorporate, with appropriate modifications, the State regulations in this regulation. State child support systems efforts are governed by HHS regulations at 45 CFR part 95, subpart F. These regulations specify in detail a rigorous methodology for planning and managing system development projects and for securing Federal funding. OCSE is considering applying part 95 to Tribal child support systems efforts. OCSE is, however, asking for comments on the

appropriateness of applying 45 CFR part 95 to the Tribal child support program and on the modifications that might be necessary or desirable to adapt part 95 to the Tribal CSE program.

How long do Tribes and Tribal organizations have to obligate and spend CSE grant funds? (section 309.135)

In paragraph (a), we propose that a Tribe or Tribal organization must obligate its CSE grant funds by the end of the budget period for which they were awarded. Any funds that remain unobligated at the end of the budget period for which they were awarded must be returned to the Department. A Tribe or Tribal organization must estimate in its refunding application any amounts that may be unobligated at the end of the current budget period. In its fourth quarter financial report for a budget period, a Tribe or Tribal organization must indicate the exact amount of any funds that remained unobligated at the end of that budget period. The Department will reduce the amount of the Tribe or Tribal organization's grant award for the budget period in which any unobligated funds were awarded, by the amount that remained unobligated at the end of the budget period.

"Obligated" means that the Tribe or Tribal organization would have to legally bind itself to pay grant funds to someone else. For example, allowing employees to work obligates the Tribe or Tribal organization to pay them, so the cost of salaries and wages accrued during a budget period represents an obligation. Likewise, a Tribe or Tribal organization's signing a contract with a vendor for supplies or services obligates the Tribe or Tribal organization to pay the vendor upon receipt of those supplies or services, so the contract is an obligation.

For the next budget period, the Department will award to the Tribe or Tribal organization the requested or negotiated amount of CSE funds that the Tribe or Tribal organization is expected to need to operate its program for that budget period—subject to the same obligation requirement. This assures that the Tribe or Tribal organization will have sufficient funds to operate its Tribal CSE program.

In paragraph (b), we propose that a Tribe or Tribal organization must liquidate obligations by the last day of the 12-month period following the budget period for which the funds were awarded and the Tribe or Tribal organization obligated the funds, unless the Department grants an exemption and extends the time period for

liquidation. Funds that remain unliquidated after the time period for liquidation has expired must be returned to the Department. Tribes and Tribal organizations may request an exemption to this rule based on extenuating circumstances. A request for an exemption must be sent to the OCSE grant officer listed on the grant award and must be made before the end of the time period for liquidation; such requests are subject to approval by the Department. If any funds remain unliquidated at the end of the maximum time period for liquidation, the Department will reduce the amount of the Tribe or Tribal organization's grant award for the budget period in which any unliquidated funds were awarded by the amount that remains unliquidated at the end of the liquidation period.

The proposed rule would require that, in most cases, obligations must be liquidated by the last day of the 12-month period following the budget period in which the obligation occurs. *Liquidate an obligation* means making a payment or payments that fulfill the obligation. For example, issuing payroll checks liquidates the accrued obligation to employees to pay them for hours worked. Paying a vendor for goods or services delivered liquidates that obligation.

As an example, a Tribe or Tribal organization might be on a July 1 to June 30 budget period and it might sign a contract with a vendor for supplies on August 1, 2001. It would have until June 30, 2003 to liquidate that obligation, *i.e.*, actually pay the vendor. (In this example, the obligation occurs during the July 1, 2001 to June 30, 2002 budget period. The Tribe or Tribal organization has one year from the end of that budget period, *i.e.*, until June 30, 2003, to liquidate the obligation.) Of course, the terms of the contract may require that the Tribe or Tribal organization pay the vendor earlier than that. What we are talking about here is the *maximum* amount of time that the Tribe or Tribal organization has to liquidate an obligation.

We note that the general rule (45 CFR 92.23) is that grantees must liquidate obligations within 90 days after the end of a funding period. However, our experience with other ACF Tribal programs indicates that 90 days often is not sufficient time for grantees to liquidate obligations, especially obligations arising from contracts. Therefore, as 45 CFR 92.23(b) permits, we propose to adopt a longer maximum time period for liquidation—one year after the end of a funding period—

consistent with the rules for many other ACF grant programs.

We believe that having a year to obligate funds and another year to liquidate those obligations will cover virtually all circumstances a Tribe or Tribal organization is likely to face in operating its program. We also believe that having such deadlines provides a necessary degree of fiscal discipline and facilitates the Tribe's and Tribal organizations and OCSE's ability to monitor the program. However, to cover very unusual circumstances, the proposed regulation provides that a Tribe or Tribal organization may request a specific exception to this rule if it is unable to liquidate an obligation by the deadline. This request would have to be made in writing before the deadline and would be subject to approval by the Department.

Any CSE grant funds awarded to a Tribe or Tribal organization that have not been liquidated within one year after the end of the funding period, or within a longer time period that the Tribe or Tribal organization has requested and the Department has approved, must be returned to the Federal government. We propose, as discussed under § 309.140(c), that Tribes and Tribal organizations must submit a liquidation report after the end of the maximum period for liquidation of obligations, and this liquidation report should indicate the exact amount of any obligations that remained unliquidated at the end of this period. The Department will reduce the amount of the Tribe or Tribal organization's grant award for the budget period in which the unliquidated funds were awarded, by the amount that remained unliquidated at the end of the liquidation period. To accomplish this, the Department will make a "negative" grant award to the Tribe or Tribal organization in the amount of the unliquidated funds. In future funding periods, the Tribe or Tribal organization will continue to receive the amount of Federal funds it is expected to need to operate its Tribal CSE program, consistent with its approved Tribal CSE program application.

If a Tribe or Tribal organization enters a multi-year contract or other multi-year arrangement, it should make the agreement renewable and fundable annually, dependent on the availability of Federal funds. The Tribe or Tribal organization should stipulate in any multi-year contract that the contract is renewable on an annual basis, and the Tribe or Tribal organization should make separate obligations each year. By structuring agreements so that funds are obligated one year at a time and only are

chargeable to the Tribal CSE grant when obligated in this way, the Tribe or Tribal organization should be able to meet the proposed obligation and liquidation requirements.

As we have explained, the Tribe or Tribal organization will continue to receive 90 or 80 percent of the reasonable, necessary, and allocable costs to operate its Tribal CSE program, consistent with its approved Tribal CSE application, and the funding amount could be renegotiated as appropriate, as part of the budget review and negotiation process. However, if a Tribe or Tribal organization has large amounts of unobligated and/or unliquidated funds, and/or a Tribe or Tribal organization repeatedly fails to liquidate its obligations within the allowed time period, this might indicate that the Tribe or Tribal organization's financial systems are inadequate and need appropriate attention. If a Tribe or Tribal organization repeatedly fails to liquidate obligations in a timely way, we would reexamine its entire program budget development process and take appropriate steps concerning any deficiencies in its financial systems.

As part of this reexamination, we would carefully analyze the Tribe's funding requests, financial and program reports, and audits and provide appropriate technical assistance to help the Tribe identify and correct any problems. We also would conduct on-site assessments as appropriate to examine the Tribe's administrative and financial systems. If necessary, we would reduce the Federal funds granted to the Tribe for its CSE program consistent with the Tribe's actual pattern of obligations in the past.

What are the financial reporting requirements? (section 309.140)

In paragraph (a), we propose that a Tribe and Tribal organization operating a Tribal CSE program must submit a Financial Status Report, Standard Form 269, quarterly. The Financial Status Reports for each of the first three quarters of the budget period are due 30 days after the end of each quarterly reporting period. The Financial Status Report for the fourth quarter is due 90 days after the end of the fourth quarter of the budget period.

The SF 269 is a government-wide form used by grantees to report on the use of grant funds. We expect that all Tribes and Tribal organizations will be familiar with the form and see no need to develop an OCSE-specific financial reporting form for Tribal CSE grant funds.

In paragraph (b), we propose a Tribe or Tribal organization operating a Tribal

CSE program must submit the "Child Support Enforcement Program: Quarterly Report of Collections" (Form OCSE-34A), or such other report as the Secretary or designee may prescribe, quarterly. The reports for each of the first three quarters of the budget period are due 30 days after the end of each quarterly reporting period. The report for the fourth quarter is due 90 days after the end of each budget period.

The due dates will be the same as the due dates for the quarterly financial status report. The OCSE-34A covers the collection and disposition of child support collected from non-custodial parents. We note that this form is designed for States' use and contains a number of entries that may be inapplicable to a Tribal CSE program. OCSE will be issuing special instructions for Tribes and Tribal organizations using the OCSE-34A. After we gain more experience with the Tribal CSE program, we may develop a child support collections form that is tailored to Tribal CSE programs.

In paragraph (c), we propose that a Tribe or Tribal organization operating a Tribal CSE program must submit a report on the liquidation of its CSE obligations, using the Financial Status Report, Standard Form 269. The liquidation report is due 30 days after the end of the maximum period for liquidations of obligations, or 30 days after all grant funds are liquidated, whichever is earlier.

In paragraph (d), we propose that the Secretary or designee will consider requiring less frequent financial reporting for Tribal CSE agencies that submit the required financial reports timely and accurately, and establish adequate financial systems and effective program operations under the Tribal CSE program.

What costs are allowable charges to Tribal CSE programs carried out under § 309.65(a) of this part? (section 309.145)

In this section, we propose allowable charges to "full service" Tribal CSE programs carried out under § 309.65(a) of this proposed rule. We propose that Federal funds under section 455(f) of the Act are available for the direct costs of operating a Tribal CSE program under an approved Tribal CSE application, provided that such costs are determined by the Secretary or designee to be reasonable, necessary, and allocable to the program. Federal funds are also available for indirect costs, where applicable, at the appropriate negotiated indirect cost rate. Allowable activities and costs would include those listed below.

In paragraph (a), we propose that costs for support enforcement services provided to eligible individuals, including parent locator services, paternity establishment, and support order establishment, modification, and enforcement services, are allowable.

In paragraph (b), we propose that allowable costs associated with the administration of the Tribal CSE program, include but are not limited to the activities listed below.

(1) Establishment and administration of the Tribal CSE program plan.

(2) Monitoring the progress of program development and operations, and evaluating the quality, efficiency, effectiveness and scope of available support enforcement services.

(3) Establishment of all necessary agreements with other Tribal, State and local agencies or private providers for the provision of child support enforcement services in accordance with Procurement Standards found in 45 CFR 92.36. These agreements may include:

(i) Necessary administrative agreements for support services;

(ii) Use of Tribal, Federal, State and local information resources;

(iii) Cooperation with courts and law enforcement officials;

(iv) Securing compliance with the requirements of the Tribal CSE program plan in operations under any agreements;

(v) Development and maintenance of systems for fiscal and program records and reports required to be made to OCSE based on these records; and,

(vi) Development of cost allocation systems.

In proposed paragraph (c), allowable costs include establishment of paternity, including the activities listed below.

(1) Establishment of paternity in accordance with Tribal codes or custom as outlined in the approved Tribal CSE program plan.

(2) Reasonable attempts to determine the identity of a child's father, such as:

(i) Investigation;

(ii) Development of evidence including the use of genetic testing performed by accredited laboratories; and

(iii) Pre-trial discovery.

(3) Court or administrative or other actions to establish paternity pursuant to procedures established by Tribal codes or custom as outlined in the approved Tribal CSE program plan;

(4) Identifying accredited laboratories that perform genetic tests (as appropriate); and

(5) Referrals of cases to another Tribal CSE agency or to a State to establish paternity when appropriate.

In proposed paragraph (d), allowable costs include establishment, modification and enforcement of support obligations including the activities listed below.

(1) Investigation, development of evidence and, when appropriate, court or administrative actions.

(2) Determination of the amount of the support obligation (including determination of income and allowable in-kind support under Tribal CSE guidelines, if appropriate).

(3) Enforcement of a support obligation including those activities associated with collections and the enforcement of court orders, administrative orders, warrants, income withholding, criminal proceedings, and prosecution of fraud related to child support.

(4) Investigation and prosecution of fraud related to child and spousal support.

In proposed paragraph (e), allowable costs include the collection and disbursement of support payments, including the activities listed below.

(1) Establishment and operation of an effective system for making collections and identifying delinquent cases and collecting from them.

(2) Referral of cases to another Tribal CSE agency or to a State CSE program for collection when appropriate.

(3) Making collections for another Tribal CSE program or for a State CSE program.

In proposed paragraph (f), allowable costs include the establishment and operation of a Tribal Parent Locator Service (TPLS) or agreements for referral of cases to a State PLS, another Tribal PLS or to the Federal PLS for location purposes.

In proposed paragraph (g), allowable costs include activities related to requests to State CSE programs for certification of collection for Federal Income Tax Refund offset.

In proposed paragraph (h), allowable costs include establishing and maintaining case records.

In proposed paragraph (i), allowable costs include planning, design, development, installation, enhancement and operation of CSE computer systems.

In proposed paragraph (j), allowable costs include staffing and equipment that are directly related to operating a Tribal CSE program.

In proposed paragraph (k), allowable costs include the portion of salaries and expenses of a Tribe's chief executive and staff that are directly attributable to managing and operating a Tribal CSE program.

In proposed paragraph (l), allowable costs include the portion of salaries and

expenses of Tribal judges and staff that is directly related to Tribal CSE program activities.

In proposed paragraph (m), allowable costs include service of process.

In proposed paragraph (n), allowable costs include training on a short-term basis that is directly related to operating a Tribal CSE program.

In proposed paragraph (o), allowable costs include costs associated with obtaining technical assistance that are directly related to operating a CSE program, from outside sources, including Tribes, Tribal organizations, State agencies, and private organizations and costs associated with providing such technical assistance to public entities.

In proposed paragraph (p), allowable costs also include any other reasonable, necessary, and allocable costs with a direct correlation to a Tribal CSE program, consistent with the cost principles in OMB Circular A-87.

The list of activities on which Federal funds under section 455(f) of the Act may be expended, is similar to the list of allowable expenses for State expenditures in our regulations at 45 CFR 304.20. This list is not meant to include all possible expenditures that could be charged to a Tribe or Tribal organization's CSE grant; making a list of every conceivable expenditure would be impossible. Rather, the list provides detailed guidelines as to the kinds of expenditures that a Tribe or Tribal organization can charge to its CSE grant. We are specifically asking for comments regarding any other category of costs on which we should provide such guidance.

One difference from States' allowable costs is in proposed § 309.145(k). Generally, States may not charge to Federal grant programs salaries attributable to high-ranking State officials, such as the Governor or legislators. However, OMB Circular A-87, Attachment B, Section 23.b, states: "For Federally recognized Indian Tribal governments and Councils of Governments (COGs), the portion of salaries and expenses directly attributable to managing and operating Federal programs by the chief executive and his staff is allowable." Following this guidance, the proposed rule provides that the portion of the salaries and expenses of a Tribe's chief executive and staff which are directly attributable to managing and operating a Tribal CSE program are allowable charges to the Tribal CSE grant.

One other difference from States' allowable costs is in proposed § 309.145(l). In paragraph (l), we propose that the portions of the salaries

and expenses of Tribal judges and staff that are directly related to Tribal CSE programs would be allowable charges to the Tribal CSE grant. To the extent that Tribal judges and staff work on matters other than those directly related to child support enforcement, their time and expenses would have to be cost-allocated among their various activities. Only those costs allocable to child support may be charged to the Tribal CSE grant.

Adequate infrastructure is necessary in order for Tribal CSE programs to succeed. However, most Tribal courts are severely underfunded and understaffed. Tribal CSE responsibilities will make significant demands on these very limited Tribal courts. Therefore, to assure adequate staffing to carry out Tribal CSE programs, we propose that salaries and expenses of Tribal judges and staff that are allocable to the Tribal CSE program be allowable costs.

In the State IV-D program, Federal financial participation is not available for costs of compensation of judges or for other judicial expenses; judiciary costs are considered under the category of general State or local governmental expenses which are incurred as a result of general State requirements. States have well-established court systems and would be paying the salaries of judges independent of their child support programs. During the consultation process, we received many requests that we allow both direct and indirect costs to be charged to Tribal CSE grants. The proposed rule contains a provision that makes it clear that a Tribe or Tribal organization may charge indirect costs computed at the applicable negotiated indirect cost rate to its Tribal CSE grant. This is consistent with general Federal grant regulations and policies. There are three areas related to Tribal CSE grants that Tribes and Tribal organizations should explore with the cognizant agency responsible for their indirect cost agreement. First, the indirect cost agreement may need to be changed to reflect the new funding source—the Tribal CSE grant. Second, Tribal CSE grants can encompass a variety of activities. Some of those activities may already be included in the Tribe's indirect cost pool. In order for those costs to be charged directly to the Tribal CSE grant, the Tribe will need to remove them from the indirect cost pool. Finally, some transactions will fall outside the negotiated indirect cost agreement, for example, child support collections and the disbursement of those collections. A Tribal CSE grantee cannot charge indirect costs on activities outside its negotiated indirect cost agreement. Again, we encourage

Tribes and Tribal organizations to discuss their Tribal CSE grant and its impact on their negotiated indirect cost agreements with the appropriate agency.

What costs are allowable charges to Tribal CSE start-up programs carried out under § 309.65(b) of this part? (section 309.150)

In this section, we propose allowable charges to Tribal CSE "start-up" programs carried out under § 309.65(b) of this proposed rule. We also propose that Federal funding for a Tribe or Tribal organization's start-up program under § 309.65(b) cannot exceed a total of \$500,000, except that, if the non-Federal share is waived, Federal funding for a start-up program cannot exceed a total of \$555,555. Federal funds are available for both direct start-up costs, and for indirect costs, where applicable, at the negotiated indirect cost rate.

Participants in our consultations repeatedly said that many Tribes will need program development funding in order to put CSE programs in place. Accordingly, the proposed rule provides that initial program activities—planning; developing Tribal CSE laws, codes, guidelines, systems and procedures; recruiting, hiring and training staff; and other approved, reasonable and necessary start-up costs—are allowable.

Capacity-building start-up funding will enable Tribes and Tribal organizations of varying sizes and circumstances to build the necessary infrastructure specifically for CSE programs. Based on the experiences of currently-operating Tribal CSE programs, we think that a Tribe or Tribal organization that receives start-up funding normally would be expected to operate a full Tribal CSE program within two years, and that a Federal share of \$500,000 is an appropriate maximum amount to pay reasonable and necessary start-up costs and complete start-up activities. A Tribe or Tribal organization could apply for full service CSE program funding under § 309.65(a) as soon as it meets the requirements of that section.

A Tribe or Tribal organization must specify the level of necessary start-up funding in its application for Tribal CSE start-up funding.

We propose that Tribes and Tribal organizations receiving start-up funding must include a program progress report in their refunding applications, and HHS will monitor these grantees. If HHS determines that a Tribe or Tribal organization receiving start-up funding is making reasonable, satisfactory progress toward operating a full

program, then start-up funding should continue for a second year if the Tribe or Tribal organization requests it. As noted earlier in the preamble, in extraordinary circumstances, HHS will consider extending the period of time during which start-up funding will be available to a Tribe or Tribal organization.

As indicated earlier, we request comments about the appropriate length and maximum amount of start-up funding.

What uses of Tribal CSE program funds are not allowable? (section 309.155)

In proposed paragraph (a), Tribal CSE funds may not be used for services provided or fees paid by other Federal agencies, or by programs funded by other Federal agencies.

In proposed paragraph (b), Tribal CSE funds may not be used for construction and major renovations.

In proposed paragraph (c), Tribal CSE funds may not be used for any expenditures that have been reimbursed by fees collected.

In proposed paragraph (d), Tribal CSE funds may not be used for expenditures for jailing of parents in Tribal CSE program cases.

In proposed paragraph (e), Tribal CSE funds may not be used for the cost of legal counsel for indigent defendants in Tribal CSE program actions.

In proposed paragraph (f), Tribal CSE funds may not be used for the cost of a guardian ad litem.

In proposed paragraph (g), Tribal CSE funds may not be used for all other costs that are not reasonable, necessary, and allocable in Tribal CSE programs, under the costs principles in OMB Circular A-87.

Our existing regulations for States (45 CFR 304.23) list a number of items whose costs cannot be charged to Federal child support grants to States. We are including a similar list of unallowable costs for Tribes and Tribal organizations in this proposed rule.

The proposed rule provides that services or fees paid by other Federal agencies or by programs funded by other Federal agencies are unallowable, as are any expenditures that have been reimbursed through collections. These provisions follow a general principle that grantees cannot charge costs against a Federal grant unless they have actually incurred the cost themselves. The proposed rule also provides that construction and major renovations are unallowable. In general, grant funds can be used for construction and renovation only if Congress specifically authorizes those uses. The child support statute does not provide for this use.

We propose that expenditures for jailing of parents in Tribal CSE cases are unallowable. The child support regulations for States prohibit States' charging costs associated with jailing parents who fail to pay their child support obligations. The reasoning for States is that incarceration is an inherent government function and is not unique to child support. Jailing individuals for violations of law or procedure—State, Tribal, or local—must be characterized as part of the overall general responsibility of State, Tribal, or local government and are therefore unallowable. If jail is the penalty for violations of Tribal law, its associated expenses should be considered general Tribal expenses for which Federal CSE funding is not permitted. Establishment and operation of penalties for violations of Tribal law is solely the responsibility of Tribal governments and not confined to the CSE program. These are costs incurred as part of administering a Tribal government and are not appropriately borne by the Federal child support grant. Therefore, we decided to propose applying the same provision to Tribes.

The proposed rule also provides that the cost of a guardian ad litem appointed by the court to protect the interests of a child in a child support case, and the cost of legal counsel for indigent defendants, are not allowable. The costs of counsel for indigent defendants and for guardians ad litem in IV-D actions are unallowable in State IV-D programs as well. The reason for this is that the guardian ad litem in a child support case is a representative of the child, as an attorney for an indigent defendant is a representative of that defendant. While it is in the best interests of the child or defendant to have such representation, that representation is essentially a private matter (and may also be a general Tribal expense that is part of the overall responsibility of Tribal government), as opposed to a child support program function. We considered allowing Tribes to charge these costs to the Tribal CSE program. Our concern was to help ensure that children and parents receive appropriate representation in child support hearings and other matters. However, we concluded that, as is the case with States, a guardian ad litem or attorney is not a CSE programmatic concern, and could not appropriately be charged to the Federal child support grant.

This proposed section specifies that all other costs that are not reasonable, necessary, and allocable under the cost principles in OMB Circular A-87 are unallowable under Tribal CSE grants.

Subpart E—Accountability and Monitoring

How will OCSE determine if Tribal CSE program funds are appropriately expended? (section 309.160)

We propose that OCSE will rely on audits required by OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations" and other provisions of 45 CFR 92.26. The Department has determined that this program is to be audited as a major program in accordance with section 215 (c) of the Circular. The Department may also supplement the required audit through reviews or audits conducted by its own staff.

Under OMB Circular A-133, audits include the review of an organization's internal control procedures. Thus, such audits are expected to look at expenditures made with Federal Tribal CSE grant funds and the child support collections of Tribes and Tribal organizations operating their own Tribal Child Support programs. OCSE will be developing an audit compliance supplement for A-133 audits specific to the Tribal CSE program in the future. In addition, OCSE may supplement the required audit through reviews or audits conducted by OCSE staff.

What recourse does a tribe or tribal organization have to dispute a determination to disallow tribal CSE program expenditures? (section 309.165)

We propose that if a Tribe or Tribal organization disputes a decision to disallow Tribal CSE program expenditures, the grant appeals procedures outlined in 45 CFR part 16 are applicable under this part. Any notice of disallowance issued by OCSE will inform the Tribe or Tribal organization of its appeal rights, the procedures for exercising those rights, and the timeframes for doing so.

The procedures of the Departmental Appeals Board are summarized in 45 CFR 16.4 as follows: The Departmental Appeals Board's basic process is to review the written record (which both parties are given ample opportunity to develop), consisting of relevant documents and statements submitted by both parties. In addition, the Board may hold an informal conference. The informal conference primarily involves questioning of the participants by a presiding Board member. Conferences may be conducted by conference call. The written record review also may be supplemented by a hearing involving an opportunity for examining evidence and witnesses, cross-examination, and oral argument. A hearing is more expensive

and time-consuming than a determination on the written record alone or with an informal conference. Generally, therefore, the Board will schedule a hearing only if the Board determines that there are complex issues or material facts in dispute, or that a hearing would otherwise significantly enhance the Board's review. Where the amount in dispute is \$25,000 or less, there are special expedited procedures. In all cases, the Board has the flexibility to modify procedures to ensure fairness, to avoid delay, and to accommodate the peculiar needs of a given case. The Board makes maximum feasible use of preliminary informal steps to refine issues and to encourage resolution by the parties. The Board also has the capability to provide mediation services.

Subpart F—Statistical and Narrative Reporting Requirements

What statistical and narrative reporting requirements apply to tribal CSE programs? (section 309.170)

We propose that Tribes and Tribal organizations must submit information and statistics for Tribal CSE program activity and caseload and costs for each budget period.

In paragraph (a), we propose that Tribes and Tribal organizations submit the total number of cases, and, of the total number of cases, indicate the number that are TANF cases and the number that are non-TANF cases.

In paragraph (b), we propose that Tribes and Tribal organizations submit the total number of paternities needed and number of paternities established.

In paragraph (c), we propose that Tribes and Tribal organizations submit the total number of support orders needed and the total number of orders established.

In paragraph (d), we propose that Tribes and Tribal organizations submit the total amount of current support due and collected.

In paragraph (e), we propose that Tribes and Tribal organizations submit the total amount of past-due support owed and the total amount collected.

In paragraph (f), we propose that Tribes and Tribal organizations submit a narrative report on activities, accomplishments and progress of the program.

In paragraph (g), we propose that Tribes and Tribal organizations submit total costs claimed.

In paragraph (h), we propose that Tribes and Tribal organizations submit the total amount of fees and costs recovered.

In paragraph (i), we propose that Tribes and Tribal organizations submit

the total amount of automated data processing (ADP) costs.

In paragraph (j), we propose that Tribes and Tribal organizations submit the total amount of laboratory paternity establishment costs.

In an effort to minimize the burden on Tribes and Tribal organizations, there are minimum reporting requirements. We understand that the Tribal measure of success would not necessarily be the same as the State measure of success. However, we do believe that this information will be helpful to Tribes and Tribal organizations when they are contemplating funding requests and anticipating (and tracking) growth of the program.

The Office of Child Support Enforcement is required by law to submit an annual report to Congress, which contains certain specific statistics. The statistics reported for proposed paragraphs (g)–(j) are statistics that will be included in that report.

When are Statistical and Narrative Reports Due? (Section 309.175)

We propose that a Tribe or Tribal organization must submit Tribal CSE program statistical and narrative reports no later than 90 days after the end of its budget period. We think that the proposed 90 days will give Tribes and Tribal organizations sufficient time to prepare and submit the report.

List of Subjects in 45 CFR Part 309

Child support, grant program—social programs, Indians, Native Americans, Tribal Child Support Enforcement programs.

Dated: July 18, 2000.

Olivia A. Golden,

Assistant, Secretary for Children and Families.

Approved: July 18, 2000.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

For the reasons discussed in the preamble, we propose to amend title 45 chapter III of the Code of Federal Regulations by adding new part 309 to read as follows:

PART 309—TRIBAL CHILD SUPPORT ENFORCEMENT (CSE) PROGRAM

Subpart A—Tribal CSE Program: General Provisions

Sec.

309.01 What does this part cover?

309.05 What definitions apply to this part?

309.10 Who is eligible to apply for Federal funding to operate a Tribal CSE program?

Subpart B—Tribal CSE Program Application Procedures

309.15 What is a Tribal CSE program application?

309.20 Who submits a Tribal CSE program application?

309.25 When must a Tribe or Tribal organization submit a Tribal CSE program application?

309.30 Where does the Tribe or Tribal organization submit the application?

309.35 What are the procedures for approval or disapproval of Tribal CSE program applications and plan amendment(s)?

309.40 What is the basis for disapproval of a Tribal CSE program application or plan amendment(s)?

309.45 How may a Tribe or Tribal organization request a reconsideration of a disapproval action?

309.50 What are the consequences of disapproval of a Tribal CSE program application or plan amendment?

Subpart C—Tribal CSE Plan Requirements

309.55 What does this subpart cover?

309.60 Who is ultimately responsible for administration of the Tribal CSE program under the Tribal CSE plan?

309.65 What must a Tribe or Tribal organization include in a Tribal CSE plan in order to demonstrate capacity to operate a Tribal CSE program?

309.70 What provisions governing jurisdiction must a Tribe or Tribal organization include in a Tribal CSE plan?

309.75 What administrative and management procedures must a Tribe or Tribal organization include in a Tribal CSE plan?

309.80 What safeguarding procedures must a Tribe or Tribal organization include in a Tribal CSE plan?

309.85 What reports and maintenance of records procedures must a Tribe or Tribal organization include in a Tribal CSE plan?

309.90 What governing Tribal law or regulations must a Tribe or Tribal organization include in a Tribal CSE plan?

309.95 What procedures governing the location of noncustodial parents must a Tribe or Tribal organization include in a Tribal CSE plan?

309.100 What procedures for the establishment of paternity must a Tribe or Tribal organization include in a Tribal CSE plan?

309.105 What procedures governing guidelines for the establishment and modification of child support obligations must a Tribe or Tribal organization include in a Tribal CSE plan?

309.110 What procedures governing income withholding must a Tribe or Tribal organization include in a Tribal CSE plan?

309.115 What procedures governing the distribution of child support must a Tribe or Tribal organization include in a Tribal CSE plan?

309.120 What intergovernmental procedures must a Tribe or Tribal

organization include in a Tribal CSE plan?

Subpart D—Tribal CSE Program Funding

- 309.125 On what basis is Federal funding in Tribal CSE programs determined?
- 309.130 How will Tribal CSE programs be funded?
- 309.135 How long do Tribes and Tribal organizations have to obligate and spend CSE grant funds?
- 309.140 What are the financial reporting requirements?
- 309.145 What costs are allowable charges to Tribal CSE programs carried out under § 309.65(a) of this part?
- 309.150 What costs are allowable charges to Tribal CSE start-up programs carried out under § 309.65(b) of this part?
- 309.155 What uses of Tribal CSE program funds are not allowable?

Subpart E—Accountability and Monitoring

- 309.160 How will OCSE determine if Tribal CSE program funds are appropriately expended?
- 309.165 What recourse does a Tribe or Tribal organization have to dispute a determination to disallow Tribal CSE program expenditures?

Subpart F—Statistical and Narrative Reporting Requirements

- 309.170 What statistical and narrative reporting requirements apply to Tribal CSE programs?
- 309.175 When are statistical and narrative reports due?

Authority: 42 U.S.C. 655(f), 1302.

Subpart A—Tribal CSE Program: General Provisions

§ 309.01 What does this part cover?

(a) The regulations in this part prescribe the rules for implementing section 455(f) of the Social Security Act. Section 455(f) authorizes direct grants to Indian Tribes and Tribal organizations to operate child support enforcement programs.

(b) These regulations establish the requirements that must be met by Indian Tribes and Tribal organizations to be eligible for grants under section 455(f). They establish requirements for: Tribal CSE plan and application content, submission, approval, and amendment; program funding; program operation; uses of funds; accountability; reporting; and other program requirements and procedures.

§ 309.05 What definitions apply to this part?

The following definitions apply to this part:

ACF means the Administration for Children and Families, Department of Health and Human Services.

Act means the Social Security Act, unless otherwise specified.

Assistant Secretary means the Assistant Secretary for Children and

Families, Department of Health and Human Services.

Central office means the central office of the Office of Child Support Enforcement.

CSE services are the services that are required for establishment of paternity, establishment, modification, and enforcement of support orders, and location of noncustodial parents as required in title IV–D of the Act, this rule, and the Tribal CSE plan. In some situations, the appropriate service may be for a Tribe or Tribal organization to refer an applicant for CSE services to another Tribal CSE agency or a State IV–D agency.

Child support order and child support obligation mean a judgment, decree, or order, whether temporary, final or subject to modification, issued by a court or an administrative agency of competent jurisdiction, for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing jurisdiction, or of the parent with whom the child is living, which provides for monetary support, health care, arrearages, or reimbursement, and which may include related costs and fees, interest and penalties, income withholding, attorneys' fees, and other relief.

The Department means the Department of Health and Human Services.

Indian means a person who is a member of an Indian Tribe.

Indian Tribe and Tribe mean any Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe and includes in the list of Federally recognized Indian Tribal governments as published in the **Federal Register** pursuant to 25 U.S.C. 479a–1.

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

Regional office refers to one of the regional offices of the Administration for Children and Families.

Secretary means the Secretary of the Department of Health and Human Services.

Title IV–D refers to the title of the Social Security Act that authorizes the Child Support Enforcement Program, including the Tribal Child Support Enforcement Program.

Tribal CSE agency means the organizational unit in the Tribe or Tribal

organization that has the delegated authority for administering or supervising the Tribal CSE program under section 455(f) of the Act.

Tribal organization means the recognized governing body of any Indian Tribe as defined in this part; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: Provided, That in any case where a contract is let or grant made to an organization to perform services benefitting one or more Indian Tribes, the approval of each such Indian Tribe shall be a prerequisite to the letting or making of such contract or grant.

§ 309.10 Who is eligible to apply for Federal funding to operate a Tribal CSE program?

The following are eligible to apply to receive Federal funding to operate a Tribal CSE program meeting the requirements of this part:

(a) An Indian Tribe with at least 100 children under the age of majority as defined by Tribal law or code, in the population subject to the jurisdiction of the Tribal court or administrative agency.

(b) A Tribal organization that demonstrates the authorization of one or more Indian Tribes to operate a Tribal CSE program on their behalf, with a total of at least 100 children under the age of majority as defined by Tribal law or code, in the population of the Tribe(s) that is subject to the jurisdiction of the Tribal court (or courts) or administrative agency (or agencies).

Subpart B—Tribal CSE Program Application Procedures

§ 309.15 What is a Tribal CSE program application?

(a) *Initial application.* The initial application must include:

(1) Standard application forms SF 424, Application for Federal Assistance, and SF 424A, Budget Information—Non-Construction Programs; and

(2) A Tribal CSE plan—a comprehensive statement meeting the requirements of subpart C of this part that describes the capacity of the Tribe or Tribal organization to operate a CSE program meeting the objectives of title IV–D of the Act, including establishment of paternity, establishment, modification, and enforcement of support orders, and location of noncustodial parents.

(b) *Annual refunding applications.* (1) Annual refunding applications must include standard application forms SF 424, Application for Federal Assistance, and SF 424A, Budget Information—Non-Construction Programs. As appropriate, annual refunding applications also may include amendment(s) to the Tribal CSE plan.

(2) The refunding application of a Tribe or Tribal organization receiving start-up funding based on approval of a Tribal CSE plan submitted pursuant to § 309.65(b) of this part also must include a progress report that describes accomplishments to date in carrying out the Tribe or Tribal organization's program development plan, and any alterations to the plan and schedule (in addition to the requirements in paragraph (b)(1) of this section).

(c) *Additional application requirement for Tribal organizations.* The application of a Tribal organization must adequately demonstrate that each participating Tribe authorizes the Tribal organization to operate a Tribal CSE program on its behalf.

§ 309.20 Who submits a Tribal CSE program application?

The authorized representative of the Tribe or Tribal organization must sign and submit the Tribal CSE program application.

§ 309.25 When must a Tribe or Tribal organization submit a Tribal CSE program application?

(a) The initial application consisting of the Tribal CSE program plan that meets the requirements under subpart C of this part, and the application and budget information forms (SF 424, Application for Federal Assistance, and SF 424A, Budget Information—Non-Construction Programs) may be submitted at any time.

(b) Subsequent refunding applications containing only SF 424, Application for Federal Assistance, and SF 424A, Budget Information—Non-Construction Programs, must be submitted annually at least 60 days before the beginning of the next budget period if the Tribe or Tribal organization wishes to receive its funding on time.

(c) If a Tribe or Tribal organization intends to make any substantial or material change in any aspect of the Tribal CSE program:

(1) A Tribal CSE plan amendment must be submitted at the earliest reasonable time for approval under § 309.35. The plan amendment must describe and, as appropriate, document the changes the Tribe or Tribal organization proposes to make to its CSE plan, consistent with the requirements under § 309.65.

(2) Any amendment of an approved Tribal CSE plan may, at the option of the Tribe or Tribal organization, be considered as a submission of a new Tribal CSE plan. If the Tribe or Tribal organization requests that such amendments be so considered, they must be submitted no less than 90 days before the proposed effective date of the new plan.

(d) If a Tribe or Tribal organization receives funding based on submittal and approval of a Tribal CSE application which includes a program development plan under § 309.65(b), a progress report that describes accomplishments to date in carrying out the plan and any alterations to the plan and schedule must be submitted with the next annual refunding request.

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

§ 309.30 Where does the Tribe or Tribal organization submit the application?

Applications must be submitted to the central office of the Office of Child Support Enforcement, Attention: Tribal Child Support Enforcement Program, 370 L'Enfant Promenade, SW, Washington, DC 20447, with a copy to the appropriate regional office.

§ 309.35 What are the procedures for approval or disapproval of Tribal CSE program applications and plan amendment(s)?

(a) The Secretary of the Department of Health and Human Services or designee will determine whether the Tribal CSE program application or Tribal CSE plan amendment submitted for approval conforms to the requirements of approval under the Act and these regulations not later than the 90th day following the date on which the Tribal CSE application or Tribal CSE plan amendment is received by the Secretary or designee, unless additional information is needed from the Tribe or Tribal organization. The Secretary or designee will notify the Tribe or Tribal organization if additional time or information is required to determine whether the application or plan amendment may be approved.

(b) The Secretary or designee will approve the application or determine that the application will be disapproved within 45 days of receipt of any additional information requested from the Tribe or Tribal organization.

§ 309.40 What is the basis for disapproval of a Tribal CSE program application or plan amendment(s)?

(a) An application or plan amendment will be disapproved if:

(1) The Secretary or designee determines that the application or plan amendment fails to meet one or more of the requirements set forth in this part;

(2) The Secretary or designee determines that the laws, code, regulations, and procedures described in the application or plan amendment will not achieve the outcomes consistent with the objectives of title IV–D including: Ensuring access to services; paternity establishment; support order establishment; basing child support orders on the noncustodial parent's ability to pay; collecting support; making timely and accurate payments to families; protecting due process rights; and protecting security of data;

(3) The Secretary or designee determines that the application or plan amendment is not complete (after the Tribe or Tribal organization has had the opportunity to submit the necessary information); or

(4) The Secretary or designee determines that the requested funding is not reasonable and necessary (after the Tribe or Tribal organization has had the opportunity to make appropriate adjustments).

(b) A written Notice of Disapproval of the Tribal CSE program application or plan amendment will be sent to the Tribe or Tribal organization upon the determination that any of the conditions of § 309.40(a) apply. The Notice of Disapproval will include the specific reason(s) for disapproval.

§ 309.45 How may a Tribe or Tribal organization request a reconsideration of a disapproval action?

(a) A Tribe or Tribal organization may request reconsideration of disapproval of a Tribal CSE application or amendment by filing a written Request for Reconsideration to the Secretary or designee within 60 days of the date of the Notice of Disapproval.

(b) The Request for Reconsideration must include:

(1) All documentation that the Tribe or Tribal organization believes is relevant and supportive of its application or plan amendment; and

(2) A written response to each ground for disapproval identified in the Notice of Disapproval, indicating why the Tribe or Tribal organization believes its application or plan amendment conforms to the requirements for approval specified at § 309.65 and subpart C of this part.

(c) After receiving a Request for Reconsideration, the Secretary or designee will hold a conference call or, at the Department's discretion, a meeting with the Tribe or Tribal

organization as part of the reconsideration, to discuss the reasons for the Department's disapproval of the application or plan amendment, and the Tribe or Tribal organization's response. Within 30 days after receipt of a Request for Reconsideration, the Secretary or designee will notify the Tribe or Tribal organization of the date and time the conference call or meeting will be held.

(d) A conference call or meeting under § 309.45(c) shall be held not less than 30 days nor more than 60 days after the date the notice of such call or meeting is furnished to the Tribe or Tribal organization, unless the Tribe or Tribal organization agrees in writing to another time.

(e) The Secretary or designee will make a written determination affirming, modifying, or reversing disapproval of a Tribal CSE program application or plan amendment within 60 days after the conference call or meeting is held. This determination upon reconsideration shall be the final decision of the Secretary.

(f) The Secretary or designee's initial determination that a Tribal CSE application or plan amendment is not approvable remains in effect pending the reconsideration under this part.

§ 309.50 What are the consequences of disapproval of a Tribal CSE program application or plan amendment?

(a) If an application submitted pursuant to § 309.25 is disapproved, the Tribe or Tribal organization can receive no funding under section 455(f) of the Act or this part until a new application is submitted and approved.

(b) If a plan amendment is disapproved, there is no funding for the activity proposed in the plan amendment.

(c) A Tribe or Tribal organization whose application or plan amendment has been disapproved may reapply at any time, once it has remedied the circumstances that led to disapproval of the application or amendment.

Subpart C—Tribal CSE Plan Requirements

§ 309.55 What does this subpart cover?

This subpart defines the Tribal CSE plan provisions which are required and which demonstrate that a Tribe or Tribal organization has the capacity to operate a child support enforcement program meeting the objectives of title IV–D of the Act, including establishment of paternity, establishment, modification, and enforcement of support orders, and location of noncustodial parents.

§ 309.60 Who is ultimately responsible for administration of the Tribal CSE program under the Tribal CSE plan?

(a) Under the Tribal CSE plan, the Tribe or Tribal organization shall establish or designate an agency to administer the Tribal CSE plan. That agency shall be referred to as the Tribal CSE agency.

(b) The Tribe or Tribal organization is responsible and accountable for the operation of the Tribal CSE program. Except where otherwise provided in this part, the Tribal CSE agency need not perform all the functions of the Tribal CSE program, so long as the Tribe or Tribal organization ensures that all approved functions are carried out properly, efficiently and effectively.

(c) If the Tribe or Tribal organization delegates any of the functions of the Tribal CSE program to another Tribe, a State, and/or another agency pursuant to a cooperative arrangement, contract, or Tribal resolution, the Tribe or Tribal organization is responsible for securing compliance with the requirements of the Tribal CSE plan by such Tribe, State, or agency. The Tribe or Tribal organization is responsible for submitting copies and appending to the Tribal CSE plan any agreements, contracts, or Tribal resolutions between the Tribal CSE agency and a Tribe, State, or other agency.

§ 309.65 What must a Tribe or Tribal organization include in a Tribal CSE plan in order to demonstrate capacity to operate a Tribal CSE program?

At the time of its application, a Tribe or Tribal organization may demonstrate capacity to operate a Tribal CSE program either under paragraph (a) or paragraph (b) of this section.

(a) A Tribe or Tribal organization may demonstrate capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act by submission of a Tribal CSE plan which meets the requirements listed in paragraphs (a)(1) through (14) of this section:

(1) Describes the population subject to the jurisdiction of the Tribal court or administrative agency for child support purposes as specified under § 309.70;

(2) Evidence that the Tribe or Tribal organization has in place procedures for accepting all applications for CSE services and providing appropriate CSE services, including referral to appropriate agencies;

(3) Assurance that the due process rights of the individuals involved will be protected in all activities of the Tribal CSE program, including establishment of paternity, and establishment, modification, and enforcement of support orders;

(4) Administrative and management procedures as specified under § 309.75;

(5) Safeguarding procedures as specified under § 309.80;

(6) Assurance that the Tribe or Tribal organization will maintain records as specified under § 309.85;

(7) Copies of all applicable Tribal laws and regulations as specified under § 309.90;

(8) Procedures for the location of noncustodial parents as specified under § 309.95;

(9) Procedures for the establishment of paternity as specified under § 309.100;

(10) Guidelines for the establishment and modification of child support obligations as specified under § 309.105;

(11) Procedures for income withholding as specified under § 309.110;

(12) Procedures for the distribution of child support collections as specified under § 309.115;

(13) Procedures for intergovernmental case processing as specified under § 309.120; and

(14) Reasonable performance targets for paternity establishment, support order establishment, amount of current support to be collected, and amount of past due support to be collected.

(b) If a Tribe or Tribal organization is unable to satisfy any or all of the requirements specified in paragraph (a) of this section, it may demonstrate capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act by submission of a Tribal CSE plan detailing:

(1) With respect to each requirement in paragraph (a) of this section that the Tribe or Tribal organization currently meets, a description of how the Tribe or Tribal organization satisfies the requirement; and

(2) With respect to each requirement in paragraph (a) of this section that the Tribe or Tribal organization does not currently meet, the specific steps the Tribe or Tribal organization will take to come into compliance and the timeframe associated with each step under this program development plan. The program development plan must demonstrate to the satisfaction of the Secretary or designee that the Tribe or Tribal organization will have in place a Tribal CSE program that will meet the requirements outlined in paragraph (a) of this section, within a reasonable, specific period of time, not to exceed two years.

(c) The Secretary or designee will cease funding a Tribe or Tribal organization's start-up efforts if that Tribe or Tribal organization fails to demonstrate satisfactory progress

pursuant to §§ 309.15(b)(2) and 309.25(d) toward putting a full program in place. A Tribe or Tribal organization whose start-up efforts have been terminated may reapply at a later date once the conditions that impeded its progress to implement a Tribal CSE program have been rectified.

(d) No later than two years from the implementation of a Tribal CSE program meeting the requirements specified in paragraph (a) of this section, or no later than two years after the Secretary or designee issues guidance outlining the necessary procedures to comply with paragraphs (d)(1) through (5) of this section, whichever is later, a Tribal CSE plan must include the following:

(1) Procedures for requiring employers operating in the jurisdiction of the Tribe to report information about newly hired employees to the Tribal CSE agency in accordance with instructions issued by the Secretary or designee;

(2) Procedures for requiring employers operating in the jurisdiction of the Tribe to report wage information on a quarterly basis to the Tribal CSE agency in accordance with instructions issued by the Secretary or designee;

(3) Procedures under which the Tribal CSE agency reports new hire and quarterly wage information to the National Directory of New Hires in accordance with instructions issued by the Secretary or designee;

(4) Procedures under which the Tribal CSE agency submits CSE cases to the Federal Case Registry in accordance with instructions issued by the Secretary or designee; and

(5) Procedures for submitting CSE cases to the Federal Income Tax Refund Offset Program in accordance with instructions issued by the Secretary or designee.

(e) In the CSE plan included in its initial application and in any plan amendment submitted as a new plan, a Tribe or Tribal organization must certify that, as of the date the plan or plan amendment is submitted to the Department, there are at least 100 children under the age of majority as defined by Tribal law or code, in the population of the Tribe, or of the Tribe(s) authorizing the Tribal organization to operate a CSE program on their behalf, that is subject to the jurisdiction of the Tribal court (or courts) or administrative agency (or agencies).

§ 309.70 What provisions governing jurisdiction must a Tribe or Tribal organization include in a Tribal CSE plan?

A Tribe or Tribal organization demonstrates capacity to operate a

Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes a description of the population subject to the jurisdiction of the Tribal court or administrative agency for child support enforcement purposes.

§ 309.75 What administrative and management procedures must a Tribe or Tribal organization include in a Tribal CSE plan?

A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes the following minimum administrative and management provisions, and the Secretary or designee determines that these provisions are adequate to enable the Tribe or Tribal organization to operate an effective and efficient Tribal CSE program and otherwise comply with Federal requirements:

(a) A description of the structure of the agency and the distribution of responsibilities within the agency.

(b) Procedures under which applications for Tribal CSE services are made available to the public upon request.

(c) Procedures under which the Tribal CSE agency must promptly open a case by establishing a case record and determining necessary action.

(d) Procedures to control the use of and to account for Federal funds and amounts collected on behalf of custodial parents, including assurances that the following requirements and criteria to bond employees are in effect:

(1) Procedures under which the Tribal CSE agency will ensure that every person who has access to or control over funds collected under the Tribal CSE program is covered by a bond against loss resulting from employee dishonesty;

(2) The requirement in paragraph (d) of this section applies to every person who, as a regular part of his or her employment, receives, disburses, handles, or has access to support collections;

(3) The requirements of this section do not reduce or limit the ultimate liability of the Tribe or Tribal organization for losses of support collections from the Tribal CSE agency's program; and

(4) A Tribe may comply with the requirements of paragraph (d) of this section by means of self-bonding established under Tribal law and approved by the Secretary or designee.

(e) Procedures under which notice of the amount of any support collected for each month is provided to families

receiving services under the Tribal CSE plan and to the noncustodial parent upon request. Families receiving services must receive such notice on a quarterly basis.

(f) Certification that for each year during which the Tribe or Tribal organization receives or expends funds pursuant to section 455(f) of the Act and this part, it shall comply with the provisions of chapter 75 of Title 31 of the United States Code (the Single Audit Act of 1984, Public Law 98–502, as amended) and OMB Circular A–133.

§ 309.80 What safeguarding procedures must a Tribe or Tribal organization include in a Tribal CSE plan?

A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes safeguarding provisions consistent with the following and approved by the Secretary or designee:

(a) Procedures under which the use or disclosure of information concerning applicants or recipients of child support enforcement services is limited to purposes directly connected with the administration of the Tribal CSE program or with other programs or purposes prescribed by the Secretary or designee.

(b) Procedures consistent with safeguarding provisions in sections 453 and 454 of the Act and regulations promulgated pursuant to section 464 of the Act and which conform to any specific rules or instructions issued by the Secretary or designee to assure that requests for and disclosure and use of information obtained from the Federal Parent Locator Service and the Federal Tax Refund Offset Program are limited only to individuals and entities authorized under these sections of the Act for the purposes authorized under these sections.

(c) Procedures under which sanctions must be imposed for the unauthorized disclosure of information concerning applicants and recipients of child support enforcement services as outlined in paragraphs (a) and (b) of this section.

§ 309.85 What reports and maintenance of records procedures must a Tribe or Tribal organization include in a Tribal CSE plan?

(a) A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes procedures for maintaining records necessary for proper and efficient operation of the program, including:

(1) Applications for support services;
 (2) Records on location of noncustodial parents;

(3) Records on actions taken to establish paternity and obtain and enforce support;

(4) Records on amounts and sources of support collections and the distribution of such collections;

(5) Records on other costs; and

(6) Statistical, fiscal, and other records necessary for reporting and accountability required by the Secretary or designee.

(b) The retention and access requirements for these records are prescribed at 45 CFR 92.42.

§ 309.90 What governing Tribal law or regulations must a Tribe or Tribal organization include in a Tribal CSE plan?

A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes Tribal law, code, regulations, and/or other evidence that provides specific procedures that result in:

(a) Establishment of paternity for any child up to and including at least 18 years of age;

(b) Establishment and modification of child support obligations;

(c) Enforcing child support obligations, including requirements that Tribal employers comply with income withholding as required under § 309.110; and

(d) Locating noncustodial parents.

In the absence of specific laws and regulations, a Tribe or Tribal organization may satisfy this requirement by providing in its plan detailed descriptions of such procedures which the Secretary or designee determines are adequate to enable the Tribe or Tribal organization to meet the performance targets approved by the Secretary or designee.

§ 309.95 What procedures governing the location of noncustodial parents must a Tribe or Tribal organization include in a Tribal CSE plan?

A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes the following provisions governing the location of noncustodial parents:

(a) In all appropriate cases, the Tribal CSE agency must attempt to locate noncustodial parents or sources of income and/or assets when location is required to take necessary action in a case; and

(b) All sources of information and records reasonably available to the Tribe

or Tribal organization must be used to locate noncustodial parents.

§ 309.100 What procedures for the establishment of paternity must a Tribe or Tribal organization include in a Tribal CSE plan?

(a) A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes the procedures that result in the establishment of paternity included in this section. For cases in which paternity has not been established, the Tribe must include in its Tribal CSE plan the procedures under which the Tribal CSE agency will:

(1) Attempt to establish paternity by the process established under Tribal law, code, and/or custom; and

(2) Provide an alleged father the opportunity to voluntarily acknowledge paternity.

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

(c) When genetic testing is used to establish paternity, the Tribal CSE agency must identify and use accredited laboratories which perform, at reasonable cost, legally and medically acceptable genetic tests which tend to identify the father or exclude the alleged father.

§ 309.105 What procedures governing guidelines for the establishment and modification of child support obligations must a Tribe or Tribal organization include in a Tribal CSE plan?

(a) A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan:

(1) Establishes one set of child support guidelines by law or by judicial or administrative action for setting and modifying child support obligation amounts;

(2) Includes a copy of child support guidelines governing the establishment and modification of child support obligations; and

(3) Indicates whether in-kind or non-cash payments of support will be permitted and if so, describes the type(s) of in-kind (non-cash) support that will be permitted and how such in-kind (non-cash) payments will be converted into cash equivalents if necessary.

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

(1) Take into account the needs of the child and the earnings and income of the noncustodial parent; and

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

(c) The Tribe or Tribal organization must ensure that child support guidelines are reviewed at least every three years.

(d) The Tribe or Tribal organization must provide that there shall be a rebuttable presumption, in any judicial or administrative proceeding for the award of child support, that the amount of the award that would result from the application of the guidelines established under paragraph (a) of this section is the correct amount of child support to be awarded.

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

§ 309.110 What procedures governing income withholding must a Tribe or Tribal organization include in a Tribal CSE plan?

(a) A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes copies of Tribal laws and regulations providing for income withholding under which:

(1) In the case of each noncustodial parent against whom a support order is or has been issued or modified under the Tribal CSE plan, or is being enforced under such plan, so much of his or her income as defined in section 466(b)(8) of the Act must be withheld as is necessary to comply with the order.

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

(3) The total amount to be withheld under paragraphs (a)(1) and (2) of this section may not exceed the maximum amount permitted under section 303(b)

of the Consumer Credit Protection Act (15 U.S.C. 1673(b)).

(4) All income withholding must be carried out in compliance with all procedural due process requirements of the Tribe or Tribal organization.

(5) The Tribal CSE agency must have procedures for promptly refunding amounts which have been improperly withheld.

(6) The Tribal CSE agency must have procedures for promptly terminating income withholding in cases where there is no longer a current order for support and all arrearages have been satisfied.

(b) To initiate income withholding, the Tribal CSE agency must send the noncustodial parent's employer a notice using the standard Federal form that includes the following:

(1) The amount to be withheld;

(2) A requirement that the employer must send the amount to the Tribal CSE agency within 7 business days of the date the noncustodial parent is paid;

(3) A requirement that the employer must report to the Tribal CSE agency the date on which the amount was withheld from the noncustodial parent's income;

(4) A requirement that, in addition to the amount to be withheld for support, the employer may deduct a fee established by the Tribe for the employer's administrative costs incurred for each withholding, if the Tribe permits a fee to be deducted;

(5) A requirement that the withholding is binding upon the employer until further notice by the Tribe;

(6) A requirement that, if the employer fails to withhold income in accordance with the provision of the notice, the employer is liable for the accumulated amount the employer should have withheld from the noncustodial parent's income; and

(7) A requirement that the employer must notify the Tribe promptly when the noncustodial parent terminates employment and provide the noncustodial parent's last known address and the name and address of the noncustodial parent's new employer, if known.

(c) The income of the noncustodial parent shall become subject to withholding, at the latest, on the date on which the payments which the noncustodial parent has failed to make under a support order are at least equal to the support payable for one month.

(d) The only basis for contesting a withholding under this section is a mistake of fact, which for purposes of this paragraph means an error in the amount of current or overdue support or

in the identity of the alleged noncustodial parent.

(e) The provisions of this section do not apply to that portion of a child support order that may be satisfied in kind.

(f) Tribal law must provide that the employer is subject to a fine to be determined under Tribal law for discharging a noncustodial parent from employment, refusing to employ, or taking disciplinary action against any noncustodial parent because of the withholding.

§ 309.115 What procedures governing the distribution of child support must a Tribe or Tribal organization include in a Tribal CSE plan?

A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes the following requirements:

(a) In cases where families receiving services from the Tribal CSE program are receiving Temporary Assistance for Needy Families (TANF) assistance from the State, collected child support must be distributed consistent with section 457(a)(1) of the Act;

(b) In cases where families receiving services from the Tribal CSE program are receiving TANF assistance from a Tribal TANF program and formerly received assistance under a State program funded under title IV–A, child support arrearage collections must be distributed consistent with section 457(a)(2) of the Act;

(c) In cases where families receiving services from the Tribal CSE program are receiving TANF assistance from a Tribal TANF program and have assigned their rights to child support to the Tribe, collected child support up to the amount of Tribal TANF assistance received by the family may be retained by the Tribe, and any collected child support in excess of the amount of Tribal TANF assistance received by the family must be paid to the family;

(d) In cases where families receiving services from the Tribal CSE program formerly received Tribal TANF assistance and assigned their right to child support to the Tribe, collected child support above current support may be retained by the Tribe as reimbursement for past Tribal TANF assistance payments made to the family for which the Tribe has not been reimbursed, and any collected child support in excess of the amount of unreimbursed Tribal TANF assistance received by the family must be paid to the family; and

(e) In cases where families receiving services from the Tribal CSE program never received assistance under a State or Tribal program funded under title IV–A, all collected child support must be paid to the family.

§ 309.120 What intergovernmental procedures must a Tribe or Tribal organization include in a Tribal CSE plan?

A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes:

(a) Procedures that provide that the Tribal CSE agency will cooperate with States and other Tribal CSE agencies to provide CSE services in accordance with instructions and requirements issued by the Secretary or designee; and

(b) Assurances that the Tribe or Tribal organization will recognize child support orders issued by other Tribes and Tribal organizations, and by States, in accordance with the requirements under 28 U.S.C. 1738B, the Full Faith and Credit for Child Support Orders Act.

Subpart D—Tribal CSE Program Funding

§ 309.125 On what basis is Federal funding in Tribal CSE programs determined?

Federal funding of Tribal CSE programs is based on information contained in the Tribal CSE application, which includes a proposed budget, a description of the nature and scope of the Tribal CSE program and which gives assurance that it will be administered in conformity with applicable requirements of title IV–D, regulations contained in this part, and other official issuances of the Department.

§ 309.130 How will Tribal CSE programs be funded?

(a) *General mechanism.* Tribal CSE programs will be funded on an annual basis. At or just before the beginning of a Tribal grantee's program year, OCSE will issue a grant award to the Tribe or Tribal organization to operate its Tribal CSE program for the following 12-month budget period.

(b) *Special provision for initial grant.* A Tribe or Tribal organization may request that its initial Tribal CSE grant award be for a period of less than a year (but at least six months) or more than an year (but not to exceed 17 months) to enable its program funding cycle to coincide with its desired annual funding cycle.

(c) *Determination of Tribal funding amounts.* The Secretary or designee will determine the amount of funds that a Tribe or Tribal organization needs to

pay reasonable, necessary, and allocable costs to operate its Tribal CSE program, based on information supplied by the Tribe or Tribal organization on Standard Form 424 (Application for Federal Assistance), Standard Form 424A (Budget Information—Non-Construction Programs), and the Tribe or Tribal organization's CSE plan, as reviewed and approved by the Secretary or designee. The Secretary or designee will review the grantee's request, ask for additional information as necessary, and negotiate any appropriate adjustments with the grantee.

(d) *Federal and non-Federal shares.*

(1)(i) During the first three years in which a Tribe or Tribal organization operates a full CSE program under § 309.65(a) of this part, the amount of the Federal grant will not exceed 90 percent of the total approved budget of the assisted program, unless the Secretary or designee has granted a waiver pursuant to paragraph (d)(2) of this section. After a Tribe or Tribal organization has operated a full CSE program under § 309.65(a) of this part for three years, the amount of the Federal grant will not exceed 80 percent of the total approved budget of the assisted program, unless the Secretary or designee has granted a waiver pursuant to paragraph (d)(2) of this section.

(ii) During the first three years in which a Tribe or Tribal organization operates a full CSE program under § 309.65(a) of this part, the Tribe or Tribal organization must contribute to its Tribal CSE program a non-Federal (Tribal) matching share of at least 10 percent of the total approved budget of the assisted program, unless the Secretary or designee has granted a waiver pursuant to paragraph (d)(2) of this section. After a Tribe or Tribal organization has operated a full CSE program under § 309.65(a) of this part for three years, the Tribe or Tribal organization must contribute to its Tribal CSE program a non-Federal (Tribal) matching share of at least 20 percent of the total approved budget of the assisted program, unless the Secretary or designee has granted a waiver pursuant to paragraph (d)(2) of this section. The non-Federal share may be provided in cash and/or in kind, fairly valued, by the Tribe or Tribal organization and/or by a third party, in accordance with the requirements of 45 CFR 92.24 and this part.

(iii) Donations of funds, and in-kind contributions of property and services valued at fair market value, from a third party to a Tribe or Tribal organization, may satisfy the non-Federal share

requirement. The non-Federal share requirement may not be satisfied by:

(A) Donations for which the donor receives or expects to receive a financial or economic benefit;

(B) Donations intended as consideration for any benefit received from the Tribe or Tribal organization;

(C) Donations whose costs ultimately will be borne by another Federal grant; or

(D) Any other donation which the Secretary or designee determines to benefit the donor in a manner inconsistent with 45 CFR part 92.

(2)(i) A Tribe or Tribal organization that lacks sufficient resources to provide a 10 or 20 percent non-Federal matching share may request a waiver of part or all of the non-Federal share.

(ii) Requests for waiver of part or all of the non-Federal matching share must be included with initial applications for funding, refunding applications, and budget amendment requests, and must contain the following:

(A) A statement that the Tribe or Tribal organization lacks the available resources to meet the 10 or 20 percent non-Federal matching share;

(B) A statement of the amount of the non-Federal share that the Tribe or Tribal organization requests the Secretary or designee to waive;

(C) A statement of the reasons that the Tribe or Tribal organization is unable to meet the non-Federal share requirement; and

(D) Documentation that reasonable efforts to obtain the non-Federal share have been unsuccessful.

(iii) The Secretary or designee may require submission of additional information and documentation as necessary. The Secretary or designee will grant a waiver of all or part of the non-Federal matching share, as appropriate, if he or she determines that a waiver request demonstrates that the Tribe or Tribal organization lacks sufficient resources to provide the non-Federal share, has made reasonable but unsuccessful efforts to obtain non-Federal share contributions, and has provided all required information. Waiver of all or part of the non-Federal share shall apply only to the budget period for which application was made.

(e) *Increase in approved budget.* A Tribal CSE grantee may request an adjustment to increase the approved level of its current budget by submitting Standard Form 424 (Application for Federal Assistance) and Standard Form 424A (Budget Information—Non-Construction Programs), and explaining why it needs to increase its budget. The Tribe or Tribal organization should submit this request at least 60 days

before additional funds are needed, in order to allow the Secretary or designee adequate time to review the estimates and issue a revised grant award as appropriate. Requests for changes to budget levels are subject to approval by the Secretary or designee. If the change in a grantee's budget estimate results from a change in the grantee's CSE plan, the grantee also needs to submit a plan amendment in accordance with § 309.25(c) of this part, with its request for additional funding. The effective date of a plan amendment may not be earlier than the first day of the calendar quarter in which an approvable plan is submitted in accordance with § 309.25(e). The Secretary or designee will review the grantee's request, ask for additional information as necessary, and negotiate any appropriate adjustments with the grantee. The Secretary or designee must approve the plan amendment before approving any additional funding.

(f) *Obtaining Federal funds.* Tribes and Tribal organizations will obtain Federal funds on a draw down basis from the Department's Payment Management System.

(g) *Grant administration requirements.* The Tribal CSE program is subject to the grant administration regulations under 45 CFR part 92.

§ 309.135 How long do Tribes and Tribal organizations have to obligate and spend CSE grant funds?

(a) A Tribe or Tribal organization must obligate its CSE grant funds by the end of the budget period for which they were awarded. Any funds that remain unobligated at the end of the budget period for which they were awarded must be returned to the Department. A Tribe or Tribal organization must estimate in its refunding application any amounts that may be unobligated at the end of the current budget period. In its fourth quarter financial report for a budget period, a Tribe or Tribal organization must indicate the exact amount of any funds that remained unobligated at the end of that budget period. The Department will reduce the amount of the Tribe or Tribal organization's grant award for the budget period for which any unobligated funds were awarded by the amount that remained unobligated at the end of this budget period.

(b) A Tribe or Tribal organization must liquidate obligations by the last day of the 12-month period following the budget period for which the funds were awarded and the Tribe or Tribal organization obligated the funds, unless the Department grants an exemption and extends the time period for

liquidation. Funds that remain unliquidated after the time period for liquidation has expired must be returned to the Department. Tribes and Tribal organizations may request an exemption to this rule based on extenuating circumstances. A request for an exemption must be sent to the OCSE grants officer listed on the most recent grant award and must be made before the end of the time period for liquidation; such requests are subject to approval by the Department. If any funds remain unliquidated at the end of the maximum time period for liquidation, the Department will reduce the amount of the Tribe or Tribal organization's grant award for the budget period for which any unliquidated funds were awarded, by the amount that remains unliquidated at the end of the liquidation period. Repeated failure by a Tribe or Tribal organization to liquidate obligations in a timely way would result in the Department's reexamination of the program budget development process and could result in action to address financial systems deficiencies.

§ 309.140 What are the financial reporting requirements?

(a) A Tribe or Tribal organization operating a Tribal CSE program must submit a Financial Status Report, Standard Form 269, quarterly. The Financial Status Reports for each of the first three quarters of the budget period are due 30 days after the end of each quarterly reporting period. The Financial Status Report for the fourth quarter is due 90 days after the end of the fourth quarter of each budget period.

(b) A Tribe or Tribal organization operating a Tribal CSE program must submit the "Child Support Enforcement Program: Quarterly Report of Collections" (Form OCSE-34A), or such other report as the Secretary or designee may prescribe, quarterly. The reports for each of the first three quarters of the budget period are due 30 days after the end of each quarterly reporting period. The report for the fourth quarter is due 90 days after the end of the fourth quarter of each budget period.

(c) A Tribe or Tribal organization operating a Tribal CSE program must submit a report on the liquidation of its CSE obligations, using the Financial Status Report, Standard Form 269. The liquidation report is due 30 days after the end of the maximum period for liquidation of obligations, or 30 days after all grant funds are liquidated, whichever is earlier.

(d) The Secretary or designee will consider requiring less frequent financial reporting for Tribal CSE

agencies that submit the required financial reports timely and accurately, and establish adequate financial systems and effective program operations under the Tribal CSE program.

§ 309.145 What costs are allowable charges to Tribal CSE programs carried out under § 309.65(a) of this part?

Federal funds are available for direct costs of operating a Tribal CSE program under an approved Tribal CSE application carried out under § 309.65(a) of this part, provided that such costs are determined by the Secretary or designee to be reasonable, necessary, and allocable to the program. Federal funds are also available for indirect costs, where applicable, at the appropriate negotiated indirect cost rate. Allowable activities and costs include:

(a) Support enforcement services provided to eligible individuals, including: parent locator services; paternity establishment; and support order establishment, modification, and enforcement services;

(b) Administration of the Tribal CSE program, including but not limited to the following:

(1) Establishment and administration of the Tribal CSE program plan;

(2) Monitoring the progress of program development and operations, and evaluating the quality, efficiency, effectiveness, and scope of available support enforcement services;

(3) Establishment of all necessary agreements with other Tribal, State, and local agencies or private providers for the provision of child support enforcement services in accordance with Procurement Standards found in 45 CFR 92.36. These agreements may include:

(i) Necessary administrative agreements for support services;

(ii) Use of Tribal, Federal, State, and local information resources;

(iii) Cooperation with courts and law enforcement officials;

(iv) Securing compliance with the requirements of the Tribal CSE program plan in operations under any agreements;

(v) Development and maintenance of systems for fiscal and program records and reports required to be made to OCSE based on these records; and

(vi) Development of cost allocation systems;

(c) Establishment of paternity, including:

(1) Establishment of paternity in accordance with Tribal codes or custom as outlined in the approved Tribal CSE program plan;

(2) Reasonable attempts to determine the identity of a child's father, such as:

(i) Investigation;

(ii) Development of evidence including the use of genetic testing performed by accredited laboratories; and

(iii) Pre-trial discovery;

(3) Court or administrative or other actions to establish paternity pursuant to procedures established by Tribal codes or custom as outlined in the approved Tribal CSE program plan;

(4) Identifying accredited laboratories that perform genetic tests (as appropriate); and

(5) Referrals of cases to another Tribal CSE agency or to a State to establish paternity when appropriate;

(d) Establishment, modification, and enforcement of support obligations including:

(1) Investigation, development of evidence and, when appropriate, court or administrative actions;

(2) Determination of the amount of the support obligation (including determination of income and allowable in-kind support under Tribal CSE guidelines, if appropriate);

(3) Enforcement of a support obligation including those activities associated with collections and the enforcement of court orders,

administrative orders, warrants, income withholding, criminal proceedings, and prosecution of fraud related to child support; and

(4) Investigation and prosecution of fraud related to child and spousal support;

(e) Collection and disbursement of support payments, including:

(1) Establishment and operation of an effective system for making collections and identifying delinquent cases and collecting from them;

(2) Referral of cases to another Tribal CSE agency or to a State CSE program for collection when appropriate; and

(3) Making collections for another Tribal CSE program or for a State CSE program;

(f) Establishment and operation of a Tribal Parent Locator Service (TPLS) or agreements for referral of cases to a State PLS, another Tribal PLS, or the Federal PLS for location purposes;

(g) Activities related to requests to State CSE programs for certification of collection for Federal Income Tax Refund Offset;

(h) Establishing and maintaining case records;

(i) Planning, design, development, installation, enhancement, and operation of CSE computer systems;

(j) Staffing and equipment that are directly related to operating a Tribal CSE program;

(k) The portion of salaries and expenses of a Tribe's chief executive

and staff that is directly attributable to managing and operating a Tribal CSE program;

(l) The portion of salaries and expenses of Tribal judges and staff that is directly related to Tribal CSE program activities;

(m) Service of process;

(n) Training on a short-term basis that is directly related to operating a Tribal CSE program;

(o) Costs associated with obtaining technical assistance that are directly related to operating a CSE program, from outside sources, including Tribes, Tribal organizations, State agencies, and private organizations, and costs associated with providing such technical assistance to public entities; and

(p) Any other reasonable, necessary, and allocable costs with a direct correlation to a Tribal CSE program, consistent with the cost principles in OMB Circular A-87.

§ 309.150 What costs are allowable charges to Tribal CSE start-up programs carried out under § 309.65(b) of this part?

Federal funds are available for direct costs of developing a Tribal CSE program under an approved Tribal CSE application carried out under § 309.65(b) of this part, provided that such costs are determined by the Secretary or designee to be reasonable, necessary, and allocable to the program. Federal funds are also available for indirect costs, where applicable, at the appropriate negotiated indirect cost rate. Federal funding for Tribal CSE program development under § 309.65(b) may not exceed a total of \$500,000; except that, when the non-Federal matching share is waived, Federal funding for Tribal CSE program development under § 309.65(b) may not exceed a total of \$555,555. Allowable start-up costs and activities include:

(a) Planning for the development and implementation of a Tribal CSE program;

(b) Developing Tribal CSE laws, codes, guidelines, systems, and procedures;

(c) Recruiting, hiring, and training Tribal CSE program staff; and

(d) Any other reasonable, necessary, and allocable costs with a direct correlation to development of a Tribal CSE program, consistent with the cost principles in OMB Circular A-87, and approved by the Secretary or designee.

§ 309.155 What uses of Tribal CSE program funds are not allowable?

Federal Tribal CSE funds may not be used for:

(a) Services provided or fees paid by other Federal agencies, or by programs funded by other Federal agencies;

(b) Construction and major renovations;

(c) Any expenditures that have been reimbursed by fees collected;

(d) Expenditures for jailing of parents in Tribal CSE program cases;

(e) The cost of legal counsel for indigent defendants in Tribal CSE program actions;

(f) The cost of guardians ad litem; and

(g) All other costs that are not reasonable, necessary, and allocable in Tribal CSE programs, under the cost principles in OMB Circular A-87.

Subpart E—Accountability and Monitoring

§ 309.160 How will OCSE determine if Tribal CSE program funds are appropriately expended?

OCSE will rely on audits required by OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations" and other provisions of 45 CFR 92.26. The Department has determined that this program is to be audited as a major program in accordance with section 215(c) of the circular. The Department may supplement the required audits through reviews or audits conducted by its own staff.

§ 309.165 What recourse does a Tribe or Tribal organization have to dispute a determination to disallow Tribal CSE program expenditures?

If a Tribe or Tribal organization disputes a decision to disallow Tribal CSE program expenditures, the grant appeals procedures outlined in 45 CFR Part 16 are applicable under this part.

Subpart F—Statistical and Narrative Reporting Requirements

§ 309.170 What statistical and narrative reporting requirements apply to Tribal CSE programs?

Tribes and Tribal organizations must submit the following information and statistics for Tribal CSE program activity and caseload for each budget period:

(a) Total number of cases and, of the total number of cases, the number that are TANF cases and the number that are non-TANF cases;

(b) Total number of paternities needed and number of paternities established;

(c) Total number of support orders needed and the total number of orders established;

(d) Total amount of current support due and collected;

(e) Total amount of past-due support owed and total collected;

(f) A narrative report on activities, accomplishments, and progress of the program;

(g) Total costs claimed;

(h) Total amount of fees and costs recovered;

(i) Total amount of automated data processing (ADP) costs; and

(j) Total amount of laboratory paternity establishment costs.

§ 309.175 When are statistical and narrative reports due?

A Tribe or Tribal organization must submit Tribal CSE program statistical and narrative reports no later than 90 days after the end of each budget period.

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