

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Centers for Medicare & Medicaid Services****42 CFR Part 433**

[CMS-2343-P]

RIN 0938-AR92**Administration for Children and Families****45 CFR Parts 301, 302, 303, 304, 305, 307, 308, and 309****RIN 0970-AC50****Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs**

AGENCY: Office of Child Support Enforcement (OCSE), Administration for Children and Families (ACF) and the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This NPRM is intended to carry out the President's directives in *Executive Order 13563: Improving Regulation and Regulatory Review*. The NPRM proposes revisions to make Child Support Enforcement program operations and enforcement procedures more flexible, more effective, and more efficient by recognizing the strength of existing state enforcement programs, advancements in technology that can enable improved collection rates, and the move toward electronic communication and document management. This NPRM proposes to improve and simplify program operations, and remove outmoded limitations to program innovations to better serve families. In addition, changes are proposed to clarify and correct technical provisions in existing regulations.

DATES: Consideration will be given to comments received by January 16, 2015.

ADDRESSES: You may transmit written comments electronically via the Internet at <http://www.regulations.gov>. This approach is our preferred method for receiving comments. To download an electronic version of the rule, you may access <http://www.regulations.gov> and follow the provided instructions.

Additionally, you may send comments via United States Postal Service to: Office of Child Support Enforcement, Administration for Children and Families, Department of

Health and Human Services, Attention: Director, Division of Policy, Mail Stop: OCSE/DP, 370 L'Enfant Promenade SW., Washington, DC 20447.

You also may send comments via overnight service to: Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services, Attention: Director, Policy Division, Mail Stop: OCSE/DP, 901 D Street SW., Washington, DC 20447.

You also may submit comments by facsimile to (202) 260-5980. Comments will be available for public inspection. To schedule an appointment, please call (202) 401-9271.

FOR FURTHER INFORMATION CONTACT:

Anne Miller, Division of Policy, OCSE, telephone (202) 401-1467, email: anne.miller@acf.hhs.gov or Barbara Addison, Division of Policy, OCSE, telephone (202) 401-5742, email: barbara.addison@acf.hhs.gov. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 between 8 a.m. and 7 p.m. Eastern Standard Time.

SUPPLEMENTARY INFORMATION:**Submission of Comments**

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 action of the proposed rule that is being addressed. Additionally, we will be interested in comments that indicate agreement with changed or new proposals. We will not acknowledge receipt of the comments we receive. However, we will review and consider all comments that are germane and are received during the comment period. We will respond to these comments in the preamble to the Final Rule.

Statutory Authority

This NPRM is published under the authority granted to the Secretary of the Department of Health and Human Services by section 1102 of the Social Security Act (Act), 42 U.S.C. 1302. Section 1102 of the Act authorizes the Secretary to publish regulations, not inconsistent with the Act, which may be necessary for the efficient administration of the functions for which the Secretary is responsible under the Act.

This proposed rule is published in accordance with the following sections of the Act: section 451 Appropriation, section 452 Duties of the Secretary, section 453 Federal Parent Locator Service, section 454 State Plan for Child and Spousal Support, section 454A

Automated Data Processing, section 454B Collection and Disbursement of Support Payments, section 455 Payment to States, section 456 Support Obligations, section 457 Distribution of Collected Support, section 458 Incentive Payments to States, section 459 Consent by the United States to Income Withholding, Garnishment, and Similar Proceedings for Enforcement of Child Support and Alimony Obligations, section 460 Civil Actions to Enforce Support Obligations, section 464 Collection of Past-due Support From Federal Tax Refunds, section 466 Requirement of Statutorily Prescribed Procedures to Improve Effectiveness of Child Support Enforcement, and section 467 State Guidelines for Child Support Awards.

Background

The Child Support Enforcement program is intended to ensure that noncustodial parents provide financial support for their children. Child support payments play an important role in reducing child poverty, lifting approximately one million families out of poverty each year. In 2012, the Child Support Enforcement program collected \$27.7 billion in support payments for the families in State and Tribal caseloads. During this same period, 82 percent of the cases had support orders, and nearly 72 percent of cases with orders had at least some payments during the year.

The proposed rule makes changes to strengthen the Child Support Enforcement program and update current practices in order to increase regular, on-time payments to families, increase the number of noncustodial parents working and supporting their children, and reduce the accumulation of unpaid child support arrears. These changes remove regulatory barriers to cost-effective approaches for improving enforcement consistent with the current knowledge and practices in the field, and informed by many successful state-led innovations. In addition, given that three-fourths of child support payments are collected by employers through income withholding, this proposed rule standardizes and streamlines payment processing so that employers are not unduly burdened by this otherwise highly effective support enforcement tool. The rule also removes outdated barriers to electronic communication and document management, updating existing child support regulations which frequently limit methods of storing or communicating information to a written or paper format. Finally, the proposed rule updates the program to reflect the recent Supreme Court decision in

Turner v. Rogers, 564 U.S. __, 131 S Ct. 2507 (2011).

Executive Order 13563 directs agencies to increase retrospective analysis of existing rules to determine whether they should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving regulatory objectives.¹ In response to *Executive Order 13563*, OCSE conducted a comprehensive review of existing regulations to improve program flexibility, efficiency, and responsiveness; promote technological and programmatic innovation; and update outmoded ways of doing business. Some of these regulations have not been updated in a generation. Proposed regulatory improvements include: (1) Procedures to promote program flexibility, efficiency, and modernization; (2) updates to account for advances in technology; and (3) technical corrections.

Before drafting the proposed rules, OCSE consulted with States, Tribes, employers, and other stakeholders. The National Council of Child Support Directors voluntarily established a subcommittee that would provide OCSE with cost saving proposals. We also sought Tribal input in a formal fashion as discussed in the Tribal Impact Statement.

These efforts helped OCSE to: Identify regulations where we could encourage noncustodial parents to assume more personal responsibility; increase State and employer flexibility to better serve families; improve program effectiveness, efficiency, and innovation; streamline intergovernmental case processing; improve customer service; and remove barriers identified by employers, States, and families that impede efficient and timely child support payments. We also identified obsolete and outmoded requirements and technical fixes that are needed. This proposed rule recognizes and incorporates policies and practices that reflect the progress and positive results that have resulted from successful program implementation by States and Tribes.

The section-by-section discussion below provides greater detail on the provisions of the proposed rule. All references to regulations are related to 45 CFR Part 300, except as specified in sections relating to the CMS regulations (42 CFR part 433).

¹ Available at: <http://www.whitehouse.gov/the-press-office/2011/01/18/improving-regulation-and-regulatory-review-executive-order>. Also, the OMB Memorandum related to Executive Order 13563 is available at: <http://www.whitehouse.gov/sites/default/files/omb/memoranda/2011/m11-10.pdf>.

Effective Date and Potential Impact on State Law

In this NPRM, some of the proposed regulatory provisions would require a State to submit revised State plan pages and/or enact new State laws. A State may meet these requirements through enactment of State law, regulations (including court rules), and/or procedures that ensure compliance with Federal law. In this NPRM, we specifically seek public comment on the actions a State will need to take to ensure compliance with the proposed provisions. We are especially interested in the steps necessary to implement proposed provisions in §§ 302.32, 302.38, 302.56, 303.6, 303.8, 303.11, and 303.100.

In addition, we seek public comment on the amount of time a State will need to take these actions and to implement the proposed provisions in this NPRM. We request comment on whether a general effective date of one year after publication of the final rule will be sufficient, for most changes, with the exception of § 302.56(a), where we have proposed that a State meet the guidelines requirements within one year after completion of the State's next quadrennial review of its guidelines.

When new State plan requirements were enacted in the past, and additional State legislation was required, in order for the State's Title IV-D plan to remain in compliance, Congress provided that the State must enact the needed legislation by the first day of the second calendar quarter beginning after the close of the first regular session of the State legislature that begins after the effective date of the regulation. If the State had a 2-year legislative session, each year of the session was considered a separate regular session of the State legislature. We are inviting comments concerning which of the proposed changes in this NPRM may require State legislation and may warrant a similar delay in the effective date.

Tribal Impact Statement

In this NPRM, OCSE proposes to update existing State case closure rules in order to deliver more efficient child support services to families. There were no Tribal IV-D programs when case closure regulations were initially written in 1989. Today there are over 50 fully operational Tribal IV-D programs. Because our proposed updates could have an impact on these programs, we invited Tribal leaders to engage in written consultation via a "Dear Tribal Leader Letter," dated April 28, 2011. We specifically sought comments on how we could encourage efficient case

transfer between a State and a Tribal IV-D program.²

In addition to written consultation, we engaged in a face-to-face consultation with Tribal leaders at the ACF Tribal Consultation Session on August 18, 2011 and March 6, 2012. We also invited Tribal leaders to participate in an additional day of consultation and dialogue, on August 19, 2011, to address any issues specific to Tribal child support.³ Finally, in 2011, OCSE met with Tribal IV-D directors, on January 12–13, 2011, February 23–24, 2011, and March 10–11, 2011, to discuss Medicaid reimbursement cases that involve enrolled Tribal members or those otherwise eligible for enrollment. Our efforts to engage Tribal leaders throughout this NPRM process proved to be beneficial. Tribal leaders provided valuable comments that helped us formulate proposed regulatory language.⁴

We would like to emphasize that case closure regulations proposed in this NPRM are only applicable to State IV-D agencies. However, during tribal consultation held previously, we consulted with tribes regarding a proposal to all State child support agencies to close a case when the case is opened due solely to a Medicaid referral for medical support enforcement of a case involving an IHS-eligible child. We encourage all interested parties, including Tribes, to provide comments regarding this portion of the regulations during the public comment period. We will review and consider all comments, before we issue a final rule.

In addition to updating case closure regulations, we propose several technical corrections to existing Tribal regulations. These proposed corrections should have little to no impact on Tribal IV-D programs.

Section-by-Section Discussion of the Provisions of This Proposed Rule

This NPRM proposes: (1) Procedures to promote program flexibility, efficiency, and modernization; (2) updates to account for advances in technology; and (3) technical corrections. The following is a discussion of all the regulatory provisions included in this NPRM. Please note the provisions are discussed in order by category. Because this is a lengthy NPRM, we present the proposed revisions in these three categories to

² Available at: <http://www.acf.hhs.gov/programs/cse/pol/DCL/2011/dcl-11-07.htm>.

³ Available at: <https://www.federalregister.gov/articles/2011/07/19/2011-18096/notice-of-meeting-administration-for-native-americans#p-8>.

⁴ For a detailed description of these proposed changes, please see the Case Closure section.

assist the reader in understanding the major concepts and rationale for the changes.

Topic 1: Procedures To Promote Program Flexibility, Efficiency and Modernization (§§ 302.32; 302.33; 302.38; 302.56; 302.70; 302.76; 303.3; 303.6; 303.8; 303.11; 303.31; 303.72; 303.100; 304.20; 304.23; and 307.11)

Section 302.32: Collection and Disbursement of Support Payments by the IV-D Agency

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) (Pub. L. 104–193) centralized payment processing through the creation of State Disbursement Units (SDUs) and standardized income withholding provisions by requiring use of a uniform income withholding form. In the 1990s and 2000s, OCSE and State child support agencies partnered closely with employer and payroll organizations to implement the 1996 reforms. These collaborative efforts have been instrumental in streamlining the process for employers and ensuring that children receive billions of dollars in child support annually. Currently, over two-thirds of child support payments (\$23 billion dollars in FY 2012) are collected by employers through income withholding, an enforcement tool which is, by far, the most effective remedy for ensuring that noncustodial parents are held accountable. While the overall framework for the processing and disbursing of child support payments is sound, the proposed rule addresses four ongoing concerns raised by employers, families, and States that hinder efficient income withholding and payment disbursement procedures: (1) State processing of income withholding payments on non-IV-D orders through the SDU; (2) SDU disbursement of child support payments directly to the family; (3) use of the Income Withholding for Support form; and (4) transmission of income withholding payments directly to the appropriate SDU.

Section 302.32 describes requirements for State IV-D agencies regarding the collection and disbursement of support payments. In its current form, this section provides narrow guidance on specific disbursement timeframes for IV-D cases and clarifies that, with respect to a case where the family is receiving TANF and has assigned rights to child support, payments must go to the SDU and not directly to the family.

A challenge for employers processing income withholding payments for child support is the interaction with SDUs, specifically in regard to payments on non-IV-D cases. An SDU is a State

payment processing unit that receives and disburses payments collected on child support orders in both IV-D and non-IV-D cases. Employers are required by law to send all income withholding payments to the SDU designated on the OMB-approved Income Withholding for Support form. The State must receive the payments, determine the distribution of funds using their statewide automated system, and disburse the funds through the SDU to the appropriate payee. While this payment process is largely automatic and seamless, particularly with payments on IV-D cases, some employers have encountered problems when sending payments to SDUs in a few States on non-IV-D cases.

Federal law requires SDUs to collect and disburse payments under orders in both IV-D cases and in non-IV-D cases in which the support order was initially issued on or after January 1, 1994, and the income of the noncustodial parent is subject to withholding pursuant to section 466(a)(8)(B) of the Act. In order to process these non-IV-D income withholding payments, SDUs must have access to basic information about the non-IV-D orders. To this end, section 454A(e) of the Act requires each State to maintain or have access to information about non-IV-D orders in its State Case Registry (SCR), which is a part of its statewide automated system. The SCR contains records on IV-D cases and on non-IV-D orders established or modified in the State on or after October 1, 1998. The State then uses the information on non-IV-D orders to identify any incoming non-IV-D payments and to handle their disbursement through the SDU. Data in the SCR, as part of the State's automated system, must be used to facilitate the collection and disbursement of child support payments through the SDU.⁵

Despite these statutory requirements to process non-IV-D income withholding payments automatically, employers have complained that a small number of States are not in compliance with these requirements and that some SDUs do not maintain information about non-IV-D orders prior to the employer sending payment to the SDU. In such cases, upon receipt of non-IV-D income withholding payments from employers, these States are contacting employers and custodial parents asking for additional information, forms, or

documents before they process a payment on non-IV-D orders, increasing the burden on employers and families. In some instances, a few States are refusing to process the non-IV-D income withholding payments and returning the funds to employers. These returned or delayed payments result in confusion, customer service complaints, and added expense and paperwork for the employer. This practice also adversely impacts noncustodial parents trying to meet their financial obligations and ultimately delays child support from reaching families.

Because States have some latitude in how they meet the requirements for managing their IV-D programs and structuring their statewide automated systems, the reasons States have trouble processing non-IV-D payments are likely to be diverse. In some situations, the problems may be traced to a State not fulfilling their responsibility for processing non-IV-D payments, while in others it may be associated with data processing procedures or certain characteristics of their statewide automated systems. For example, the problem may be related to: Challenges in the automated computer interface between State agencies and courts; delays in the original transfer of non-IV-D order information from the courts to the SCR; the sharing of non-IV-D order data between the SCR and the SDU; or the number and type of non-IV-D data elements in the SCR.

To address employer problems with States not processing payments on non-IV-D orders through their SDUs, we propose to set forth in § 302.32 the basic requirements for SDUs, as stated in section 454B of the Act. Specifically, we propose revising § 302.32(a) with language similar to section 454B(1) of the Act to describe the State's responsibility to establish and operate a SDU. Under proposed paragraph (a), a IV-D agency must establish and operate a SDU for the collection and disbursement of payments under support orders in all cases enforced under the title IV-D plan and in all cases not being enforced under the IV-D plan in which the support order is initially issued in the State on or after January 1, 1994, and in which the income of the noncustodial parent is subject to withholding pursuant to section 466(a)(8)(B) of the Act. We propose a conforming change by deleting the existing language in paragraph (a). The existing paragraph (a) is a holdover regulatory provision from the Aid to Families with Dependent Children Program and addresses child support payments which are collected for a recipient of assistance under the

⁵ For further information, see AT-98-08, *Policy Questions and Responses Regarding the State Case Registry and the Federal Case Registry of Child Support Orders under sections 453(h) and 454A(e) of the Social Security Act*, available at: <http://www.acf.hhs.gov/programs/cse/pol/AT/1998/at-9808.htm>.

State's title IV-A plan. This language is no longer needed because it is subsumed under the new proposed paragraph (a) which states that payments in all IV-D cases must be made to the SDU.

In the past, OCSE refrained from regulating SDU requirements because we considered the statute to be self-implementing. We noted that we would reconsider this position if a need arose.⁶ Because of the problems with non-IV-D payment processing, we believe that rules are needed. The regulatory approach we are proposing is predicated on the belief that States are returning or delaying non-IV-D payments for diverse reasons. Therefore, we believe a regulatory approach that is more general and less prescriptive is appropriate. While our aim is to dispel any confusion over the requirements, this approach will allow States flexibility to identify and remove the barriers to non-IV-D payment processing as they might occur uniquely in each State. We note, however, that there is no Federal statutory authority for States to require custodial parents or employers to provide information and data on non-IV-D orders as a condition to process these payments. We especially are interested in hearing from States and the public whether the general approach in the regulations will effectively address the problems with SDU payment processing on non-IV-D orders, and if there are additional problematic issues regarding SDU payment processing this rulemaking can or should address.

As a final note on this proposal, over the years States have raised the question of whether FFP is available for activities in non-IV-D cases. In 2010 OCSE issued PIQ-10-01, "Federal Financial Participation and non-IV-D activities,"⁷ to expand on earlier SDU policy issued in Action Transmittal, AT-97-13, "Collection and Disbursement of Support Payments." PIQ-10-01 states that FFP is available for the non-IV-D case data requirements and payment processing required by the Social Security Act. In general, FFP is available for the submission and maintenance of data in the SCR with respect to non-IV-D support orders established or modified on or after October 1, 1998; the receipt and disbursement of collections through income withholding for child support orders initially issued in the State on or after January 1, 1994; and the required reporting to OCSE of non-IV-

D financial and statistical information. See OCSE-PIQ-10-01 for more information. We believe the clarification of FFP availability will mitigate States' cost concerns related to this proposed provision.

Section 302.33: Services to Individuals Not Receiving Title IV-A Assistance

Current § 302.33(a)(4) requires that whenever a family is no longer eligible for assistance under a State's TANF, foster care, and/or Medicaid programs, the IV-D agency must notify the family, within 5 working days of the notification of ineligibility, that child support services will continue, without application, unless the family notifies the agency to the contrary. In certain situations, we believe that automatic continuation of child support services can be inappropriate for the family, such as once a child has been reunified with the family or the child has aged out of foster care. Therefore, based on a request from a joint child support/child welfare workgroup, we propose an efficiency change in § 302.33(a)(4).

We propose to eliminate "title IV-E foster care" from the first sentence in § 302.33(a)(4) and to add to that provision stating that the requirement to notify the family within 5 working days that services will be continued, unless the family notifies the IV-D agency to the contrary, also applies when a child is no longer eligible for IV-E foster care, but only in those cases that the IV-D agency determines that such services and notice would be appropriate. This proposed revision provides State IV-D agencies with additional flexibility to determine whether notice to a family in which a child no longer receives foster care maintenance payments is appropriate and whether to close the case. We believe that these revisions will simplify the notification process in post-foster care cases, recognizing that continued child support enforcement may be inappropriate, for example, once foster care cases are closed due to family reunification or when children age out of foster care. However, existing arrearages in these IV-D referral cases would remain an obligation owed to the State and collectible under all applicable State laws and processes pursuant to section 456 of the Act and 45 CFR 302.50(c).

At the request of States, we propose to provide each State the option to elect in its State plan to allow an individual parent who files an application the flexibility to select child support services from a menu of service options to better meet the needs of the families. Currently, a parent who applies for

services has to accept the full range of services.

We propose to add a new paragraph (a)(6) that indicates that the State would elect in its State plan whether or not it provides applicants under subparagraph (a)(1)(i) the option to request limited services. This rule provides the State with authority to allow either the custodial or the noncustodial parent to request specific child support services tailored to the family's circumstances. In addition, we believe that limited services will result in increased customer satisfaction; help fathers assume more personal responsibility; help to make enforcement services more successful and efficient; and respond to families' needs. We believe that this will give States increased flexibility to be responsive to the family.

Under this proposal, for example, a State could elect to allow an applicant for services to request paternity establishment services only. Based on the State's procedures, if an unwed mother lived with the biological father of a child, he could request paternity establishment services only. Having paternity legally established may provide the biological father a sense of personal responsibility for the child. This would benefit the unwed parents since genetic testing could be done at a reduced rate, and would benefit the child if paternity is established by clarifying birth records and establishing possible eligibility for dependents' benefits. Additionally, if the parents separate in the future, it would be easier for the State child support agency to establish and enforce a support obligation. In the Child Support Enforcement program, this menu of service options is called "limited services." The child support community has discussed this approach for many years as a positive strategy to tailor services to serve families.

If the State chooses this option, it would be required to define how this process would be implemented and establish and use procedures that would specify what limited services are allowed and under what circumstances. Additionally, the State's procedures would require that a limited services applicant requesting enforcement services must receive all appropriate mandatory enforcement services, such as the Federal Tax Refund Offset, income withholding, and credit bureau reporting. This provision also states that an application would be considered full-service unless the parent specifically applies for limited services in accordance with the State's procedures, and if one parent specifically requests limited services

⁶ For further information, see AT-97-13, *Collection and Disbursement of Support Payments*, available at: <http://www.acf.hhs.gov/programs/cse/pol/AT/1997/at-9713.htm>.

⁷ Available at: <http://www.acf.hhs.gov/programs/cse/pol/PIQ/2010/piq-10-01.htm>.

and the other parent requests full services, the case will automatically receive full services. Also, for all limited service applicants, the State would be required to charge the application and service fees required under paragraphs (c) and (e) of the section, and may recover costs in accordance with paragraph (d) of this section if the State has chosen this option in its State plan. Finally, the State must also include information in its application form on the range of available services, consequences of selecting a limited service, and an explanation that the case will be closed when the limited service is completed.

Before a State chooses to implement these new criteria, it would need to ensure that its automated system can be easily modified so that it can effectively manage its caseloads regarding what services are requested. Also, if a State provides this option, the State would have flexibility on how it implements these proposed changes. The State must ensure that these changes are made in a consistent manner in accordance with its State plan. The State could also choose to implement this option for one or two services, and expand this as it gains experience in implementing these changes.

We believe that as States modernize their statewide automated systems, this option will be easier for States to implement and to manage in their caseloads, and at the same time will provide them additional flexibility to provide child support services that meet the needs of families. We expect limited services can be a cost-effective way to provide efficient and targeted services while avoiding expenditures on unnecessary and unproductive services.

Also, the State must ensure that an application is received from the applicant documenting what limited services are being requested. Regarding the fees for a limited-services application, the State may choose to charge the same fees as a full-service application. However, the fees must be charged in accordance with paragraphs (c) and (e) of this section, and if the State chooses to recover costs, it must be done in accordance with paragraph (d) of this section.

Finally, we are cognizant of the risk of domestic violence in the general operation of the child support program, and in particular as related to this proposed limited services provision. The child support program has required domestic violence safeguards in § 303.21(e) and we will continue to work with States and advocates to ensure that best practices are in place to safeguard the affected parties. OCSE

also has a major domestic violence initiative underway to identify and promote effective practices to support families. We invite comments on whether there are additional domestic violence safeguards that should be put in place with respect to the limited services options.

Section 302.38: Payments to the Family

This proposed rule addresses concerns raised by States and families about the difficulties that families encounter when child support payments are disbursed directly to private collection agencies, bypassing the custodial families to whom the money is owed. Unlike private firms that contract with State child support agencies, private collection agencies contract directly with custodial parents for the collection of child support and are not affiliated with the State IV-D program. While earlier OCSE policy guidance did not preclude State IV-D programs from disbursing child support collections to private collection agencies if requested by the custodial parent-payee, OCSE now believes that disbursement of child support collections from SDUs to private collection agencies instead of directly to families puts the government in the role of indirectly enforcing private contracts and is not in the best interests of families and children.

Numerous consumer complaints and litigation have highlighted the questionable practices of many private collection agencies. These practices include deceptive advertising; perpetual service contracts that require direct payment to the company and prohibit cancellation; falsely representing the business as a government office; using official-looking documents to pressure employers to redirect support withheld from employees' paychecks; demanding payments from grandparents; demanding payments that are not owed from noncustodial parents; and other allegedly deceptive and abusive tactics.⁸ OCSE's intent is not to regulate private collection agencies, but rather to ensure that child support programs are not facilitating, and the taxpayer is not subsidizing, the sometimes inappropriate business practices of private collection agencies not under contract to States. In order to provide protections for families and fulfill the

intent of the founding child support legislation and subsequent policy, we propose that child support payments owed and payable to families be disbursed directly, and only, to families.

Such private collection agencies enter into contracts with custodial parents to collect child support, but are not subject to the same contractual or regulatory oversight as State IV-D agencies and other private firms that have contracts with States to carry out public child support functions. Many states contract with private firms to provide various child support services. These private firms act on behalf of the State IV-D agency and must comply with the same statutes and regulations as the State IV-D program. Moreover, the Federal Trade Commission has determined that child support private collection agencies are not subject to the Fair Debt Collection Practices Act, 15 U.S.C. 1692–1692p, administered by the Federal Trade Commission because child support debt is not considered consumer debt.⁹

Since the Child Support Enforcement program was created over 30 years ago, the statutory framework for payment processing imposed on States the requirement that collections owed to the family should be paid to the family. Section 457 of the Act, Distribution of Collected Support, requires the State to track and distribute payments, and clearly indicates that money owed to the family is paid to the family, unless the family received TANF assistance and has assigned its rights to support to the State as reimbursement. In accordance with section 457 of the Act, the portion of the support owed to the family must be distributed "to the family" and not to any other party.

Section 454(11)(B) of the Act reinforces the requirement that payments are made to families. According to this provision, States must provide in their State child support enforcement plans that any payments required to be made to a family pursuant to section 457 must be made to "the resident parent, legal guardian, or caretaker relative having custody of or responsibility for the child or children" (emphasis added). The law is clear that payments due to families are to be disbursed from SDUs to the individual with responsibility to protect and further the child's best interests.

On December 29, 2010, ACF published final regulations in the *Federal Register* (75 FR 81894) for

⁸ These practices are described in various consumer complaints and letters to State consumer agencies, as well as in GAO report, *Child Support Enforcement—Clear Guidance Would Help Ensure Proper Access to Information and Use of Wage Withholding by Private Firms*, GAO-02-349 (2002), available at: <http://www.gao.gov/new.items/d02349.pdf>.

⁹ *Mabe v. G.C. Services Limited Partnership*, 32 F. 3d 86 (4th Cir. 1994), available at: http://scholar.google.com/scholar_case?case=16399759672854246032&q=Mabe+v.+G.C.+Services+Ltd.+Partnership&hl=en&as_sdt=2,9&as_vis=1.

Safeguarding Child Support Information (Safeguarding rule) by distinguishing between individuals who have a legal and fiduciary obligation to protect a child's best interests and those who do not.¹⁰ Specifically, the Safeguarding rule clarified that each of the categories of individuals authorized to receive child support information under section 453(c)(3) of the Act, has "a relationship with the child that imposes an intrinsic responsibility to assure protection of the child's welfare and interests." The rule excludes those "with a pecuniary interest of their own that may be inconsistent with the child's best interests" from receiving confidential information contained in the Federal and State Parent Locator Service. According to the standard set in the Safeguarding rule, therefore, private collection agencies, with their financial self-interest and no fiduciary duty to serve the children's best interests, are not authorized to receive protected child support information.

Because the categories of individuals authorized to receive information, as listed in section 453(c)(3) of the Act ("the resident parent, legal guardian, attorney, or agent of the child"), significantly overlap with the entities authorized to receive payment disbursement in section 454(11)(B) of the Act ("the resident parent, legal guardian, or caretaker relative having custody of or responsibility for the child or children"), the definitions used in the Safeguarding regulation are directly analogous to the discussion in this proposed rule.

The Safeguarding rule notes that a "resident parent" lives with the child and provides the child's day-to-day care. Further, an individual who has been appointed by court order as a child's "legal guardian" is legally responsible for the child's care and has a legal obligation to act in the child's best interest. The Safeguarding rule further notes that a "caretaker relative" is a longstanding term used in the TANF program and its predecessor program, Aid to Families with Dependent Children (AFDC), to refer to those relatives responsible for the day-to-day care of children and who are eligible to apply for cash assistance for needy families, regardless of the existence of a legal custody order or legal guardianship status.

Each of these individuals has a relationship with the child that imposes responsibility to assure protection of the child's welfare, while private collection

agencies historically do not, even if those companies employ attorneys. Therefore, consistent with the specific statutory descriptions of authorized individuals, as well as the general standards set forth in the Safeguarding rule, this proposed rule would require that any payments made under §§ 302.32 and 302.51 would be made directly to the resident parent, legal guardian, or caretaker relative and not to a private collection agency with a contractual agreement with the family.

The primary goal of the Child Support Enforcement program is to ensure that families benefit directly from child support payments. This family-first perspective is intended to ensure families' self-sufficiency and strengthen parents' commitment to supporting their children. On the one hand, this approach is a shift from child support's earlier focus on welfare reimbursement and cost recovery for Federal and State governments; on the other hand, it is consistent with the original principle that payments due to families who never received welfare are disbursed to families directly. Congress affirmed these family-first principles when it passed the Deficit Reduction Act of 2005 (DRA). Known as "family first distribution," the purpose of section 7301(b) of the DRA is, "Increasing child support payments to families and simplifying child support distribution rules".¹¹ Section 7301 of the DRA modified the rules of distribution and assignment of section 457 of the Act, and provided a set of options for States which, if adopted, would result in 100 percent of payments to families who are receiving or have received welfare assistance. The DRA's family-first approach clearly discourages redirecting payments to any individuals or entities other than families. In 2012, more than 94 percent of child support collected by the IV-D program was paid to families.¹²

In sum, based on the intent of the original child support legislation and the more recent "family-first" policies, we propose to revise § 302.38, "Payments to the family," by inserting the word "directly" before the phrase "to the resident parent, legal guardian,

or caretaker relative." This proposed change will address concerns regarding disbursement of payments directly to the family. The purpose is to require SDUs to disburse child support payments directly to the intended beneficiary and not to divert those payments to another entity such as a private collection agency or other creditor of the custodial parent. The proposed change does not preclude a custodial parent from entering into a contractual relationship with a private collection agency for the collection of child support. Also, the proposed change is not intended to affect or change a State's current practices regarding electronic disbursements of child support payments. Disbursement of a child support payment to a custodial parent's bank account is a direct payment to the family. In addition, please note that this provision applies to payments that are due to the family; this provision does not preclude a State from sending payments for distribution and disbursement to initiating agencies on intergovernmental actions. We ask specifically for comments on whether the proposed regulations will affect State laws that permit the child support payment to be sent to other individuals/entities, such as a conservator or private attorney representing the custodial parent and child, with a legal and fiduciary duty to act in the child's best interest.

Section 302.56: Guidelines for Setting Child Support Awards

We also propose to update Federal regulations in § 302.56 that address State guidelines for setting child support awards. A number of these proposed changes are intended to ensure that parents meet their child support obligations and to assist States in complying with the U.S. Supreme Court decision in *Turner v. Rogers*, 564 U.S. ___, 131 S Ct. 2507 (2011). Consistent child support payments can help custodial families achieve economic stability, which is especially important to the millions of low- and moderate-income families served by the Child Support Enforcement program.¹³ However, basic fairness requires that child support obligations reflect an obligor's actual ability to pay them.

A growing body of research finds that compliance with child support orders in some States, regardless of income level, declines when the support obligation is

¹⁰ For further information, see Public Law No. 109-171, Title VII, Subtitle C, Section 7301 (2006), available at: <http://www.gpo.gov/fdsys/pkg/PLAW-109publ171/pdf/PLAW-109publ171.pdf>.

¹¹ For further information, see OCSE's *FY 2012 Preliminary Report, Table P-1* available at: <http://www.acf.hhs.gov/programs/css/resource/fy2012-preliminary-report-table-p-1>. The figure was calculated by adding total payments to families, medical support, and the amount passed through to families for a total of \$26.1 billion distributed to families. This figure represents 94.2 percent of total collections in the amount of \$27.7 billion.

¹³ For further information, see Carl Formoso, *Child Support Enforcement: Net Impacts on Work and Welfare Outcomes pre- & post-PRWORA*, Washington State Division of Child Support (2000), available at: <http://www.dshs.wa.gov/pdf/esa/dcs/reports/csepolicybrief.pdf>.

¹⁰ The 2010 Safeguarding final rule is available at: <http://www.acf.hhs.gov/programs/cse/pol/AT/2010/at-10-12.htm>.

set above 15–20 percent of the obligor's income, and that orders for excessive amounts result in lower, not higher, child support payments.¹⁴ States like California and Washington have found that the direct result of establishing support obligations that exceed the ability of obligors to meet them is unpaid arrearages. Most arrearages are owed by noncustodial parents with earnings under \$10,000 and are uncollectible.¹⁵ Research finds that high arrearages substantially reduce the formal earnings of noncustodial parents and child support payments in economically disadvantaged families, while reducing unmanageable arrearages can increase payments.¹⁶ Accumulation of high arrearage balances is often associated with incarceration, because parents have little to no ability to earn income while they are incarcerated, and little ability to pay off the arrearages when released due to lack of employment.¹⁷

¹⁴ Mark Takayesu, *How Do Child Support Order Amounts Affect Payments and Compliance?* Orange County, CA Department of Child Support Services, (Oct. 2011), available at: http://ncsea.omnibooksonline.com/2012policyforum/data/papers/PV_1.pdf#page=1; and Carl Formoso, *Determining the Composition and Collectability of Child Support Arrearages, Volume 1: The Longitudinal Analysis* (2003), available at: <http://www.dshs.wa.gov/pdf/esa/dcs/reports/cvol1prn.pdf>. See also HHS Office of Inspector General report, *The Establishment of Child Support Orders for Low Income Non-custodial Parents*, OEI-05-99-00390, (2000), available at: <http://oig.hhs.gov/oei/reports/oei-05-99-00390.pdf>.

¹⁵ For further information, see Elaine Sorensen, Liliana Sousa, and Simon Schaner's report, *Assessing Child Support Arrears in Nine Large States and the Nation* (2007), available at: <http://aspe.hhs.gov/hsp/07/assessing-CS-debt/>.

¹⁶ For further information, see Carolyn J. Heinrich, Brett C. Burkhardt, and Hilary M. Shager, *Reducing Child Support Debt and Its Consequences: Can Forgiveness Benefit All?* (2010), available at: http://www.irp.wisc.edu/research/childsup/cspolicy/pdfs/2007-09/FamiliesForward_3_19-10.pdf; Maria Cancian, Carolyn Heinrich, and Yiyoon Chung, *Does Debt Discourage Employment and Payment of Child Support?* (2009), available at: <http://www.irp.wisc.edu/publications/dps/pdfs/dp136609.pdf>; and Harry Holzer, Paul Offner, and Elaine Sorensen, *Declining Employment Among Young Black Less-Educated Men: The Role Of Incarceration and Child Support* (2004), available at: http://www.urban.org/uploadedpdf/411035_declining_employment.pdf.

¹⁷ For further information, see Carmen Solomon-Fears, Gene Falk, and Adrienne L. Fernandes-Alcantara, *Child Well-Being and Noncustodial Fathers* (2013), Congressional Research Service. See also Amanda Geller, Irwin Garfinkel, and Bruce Western, *The Effects of Incarceration on Employment and Wages: An Analysis of the Fragile Families Survey* (2006), Center for Research on Child Wellbeing, Working Paper # 2006-01-FF, available at: <http://www.saferfoundation.org/files/documents/Princeton-Effect%20of%20Incarceration%20on%20Employment%20and%20Wages.pdf>. Also, the Report of the Re-Entry Policy Council, *Charting the Safe and Successful Return of Prisoners to the Community*, Council of State Governments, Reentry Policy Council, January 2005, Policy Statement 13, available at: http://ncsea.omnibooksonline.com/2012policyforum/data/papers/PV_1.pdf#page=1.

As a condition of State IV-D plan approval, section 467 of the Act requires a State to establish guidelines for child support awards issued in the State. Existing regulations provide a State with discretion to design its child support guidelines within the parameters of § 302.56. Currently, under § 302.56(c)(1), guidelines must take into consideration all earnings and income of the noncustodial parent.

Research suggests that setting an accurate order based upon the ability to pay improves the chances that noncustodial parents will continue to pay over time. Compliance with support orders is strongly linked to ability to pay. Many low-income noncustodial parents do not meet their child support obligations because they do not earn enough to pay what is ordered.¹⁸ The HHS Office of the Inspector General concluded that child support orders set for low income parents are ineffective in generating child support payments when set too high relative to ability to pay, finding that compliance is significantly lower when a monthly order is more than 20 percent of a parent's income than when it is 15 percent or less.¹⁹ Similarly, studies conducted in Washington and California found that, regardless of income level, arrearages are unlikely to accumulate if the support obligation is no more than 20 percent of earnings, or lower.²⁰

Setting child support orders that reflect an actual ability to pay is crucial to encouraging compliance, increasing accountability for making regular payments, and discouraging uncollectible arrearages. On January 30, 2013, the National Child Support Enforcement Association issued a policy statement indicating that: "As a general rule, child support guidelines and

reentrypolicy.org/Report/About. For further background, see Jessica Pearson's article, *Building Debt While Doing Time: Child Support and Incarceration*, Judges' Journal, American Bar Association, no. 1, vol. 43 (Winter 2004), available at: <http://peerta.acf.hhs.gov/uploadedFiles/BuildingDebt.pdf>.

¹⁸ Michelle Ganow Jones, *Options to Help Low-Income Noncustodial Parents Manage Their Child Support Debt* (2002), available at <http://76.12.61.196/publications/options/to/help/low-incomeIN.htm>.

¹⁹ For further information, see HHS OIG report, *The Establishment of Child Support Orders for Low Income Non-custodial Parents*, OEI-05-99-00390 (2000), available at: <http://oig.hhs.gov/oei/reports/oei-05-99-00390.pdf>.

²⁰ Carl Formoso, *Determining the Composition and Collectability of Child Support Arrearages, Volume 1: The Longitudinal Analysis* (2003), available at: <http://www.dshs.wa.gov/pdf/esa/dcs/reports/cvol1prn.pdf>. Mark Takayesu, *How Do Child Support Orders Affect Payments and Compliance?* Orange County, CA Department of Child Support Services (Oct. 2011), available at: http://ncsea.omnibooksonline.com/2012policyforum/data/papers/PV_1.pdf#page=1.

orders should reflect actual income of parents and be changed proactively to ensure current support orders reflect current circumstances of the parents and to encourage regular child support payments. Presumed or default orders should occur only in limited circumstances."²¹ Many States have programs to ensure that child support orders are based on the ability to pay. As of September 2011, at least 21 States and the District of Columbia were operating programs designed to ensure that child support orders reflect current earnings when orders are initially established and are modified when earnings change.²² For example, Idaho operates a Default Reduction Project, Arizona conducts modification workshops, Kentucky developed on-line assistance for parents to modify their orders, and Texas offers enhanced Web site assistance for modifying orders to match reduced income. In addition, as of April 2011, 38 States and the District of Columbia did not treat incarceration as "voluntary unemployment," a legal barrier to modifying orders to reflect actual income.²³ Evidence shows that engaging both parents in the order establishment process is likely to result in more accurate order setting, avoiding default orders, avoiding the unnecessary build-up of arrearages, and increasing parental commitment to regularly pay child support.²⁴

²¹ The National Child Support Enforcement Association policy statement, *Setting Current Support Based on Ability to Pay*, dated January 30, 2013, is available at: http://www.ncsea.org/documents/Ability_to_Pay-final.pdf.

²² Department of Health and Human Services, Office of Child Support Enforcement, *State Child Support Agencies with Programs to Ensure that Child Support Orders Reflect Current Earnings* (2012), available at: <http://www.acf.hhs.gov/programs/css/resource/state-child-support-agencies-with-programs-to-ensure-that-child-support>.

²³ Thirty two States allow for an order modification when noncustodial parents are incarcerated and six other states do not have a legal bar against such modifications. See Department of Health and Human Services, Office of Child Support Enforcement, "Voluntary Unemployment," *Imputed Income, and Modification Laws and Policies for Incarcerated Noncustodial Parents* (2012), Project of Avoid Increasing Delinquencies, Child Support Fact Sheet, available at: http://www.acf.hhs.gov/sites/default/files/ocse/paid_no4_companion.pdf.

²⁴ See Elaine Sorensen and Tess Tannehill, *Preventing Child Support Arrears in Texas by Improving Front-end Processes* (2006), available at: http://www.urban.org/UploadedPDF/411829_child-support_arrears.pdf; Center for Policy Research, *Reducing Child Support Default Orders in Colorado* (2007), Colorado Division of Child Support Enforcement, Final Report for Grant No. 90FD0080, available at: https://childsupport.state.co.us/siteuser/do/vfs/Readfile/cm/Publications/cm/Reports/cm:Colorado_x0020_Default_x0020_Project_x0020_Final_x0020_Report.pdf; and Kelly Macatangay, Anton H. Westveld, Brian Kunkel,

If States are unable to obtain data on the earnings and income of the noncustodial parent in a child support proceeding, many States impute the noncustodial parent's income. In some cases, imputation of income is based on an analysis of a parent's specific education, skills, and work experience,²⁵ while in other cases, imputation of income is standardized based on full-time, full-year work at minimum or median wage, particularly if a noncustodial parent is not working, or there is no available income information.

However, research suggests that support orders based on imputed income often go unpaid because they are set beyond the ability of parents to pay them. The result is high uncollectible arrears balances that can provide a disincentive for obligors to maintain employment in the regular economy. Inaccurate support orders also can help fuel resentment toward the child support system and a sense of injustice that can decrease willingness to comply with the law.²⁶ The research supports the conclusion that accurate support orders that reflect a noncustodial parent's actual income are more likely to result in compliance with the order, make child support a more reliable source of income for children, and reduce uncollectible child support arrearages.²⁷

Before child support programs were computerized, imputation of income was used as the basis for establishing support obligations because limited information was available to decision-makers. Today, however, States have access to multiple interstate data systems, including the State and National Directories of New Hires as well as the Financial Institution Data Match (FIDM) and Multistate Financial

Intervening for Success. (2012) Final Report for Grant No. 90FD0136.

²⁵ See PIQ-00-03, *State IV-D Program Flexibility with Respect to Low Income Obligors—Imputing Income; Setting Child Support Orders and Retroactive Support; Compromising Arrearages; Referral to Work-Related Programs and Other Non-traditional Approaches to Securing Support*, available at <http://www.acf.hhs.gov/programs/cse/pol/PIQ/2000/piq-00-03.htm>.

²⁶ Christy Visher and Shannon Courtney, *Cleveland Prisoners' Experience Returning Home*, Urban Institute (2006), available at http://www.urban.org/UploadedPDF/311359_cleveland_prisoners.pdf. Also, Maureen R. Waller and Robert Plotnick, *Effective Child Support Policy for Low-Income Families: Evidence from Street Level Research*, Journal of Policy Analysis and Management (2001), available at: <http://www.jstor.org/stable/3325595>.

²⁷ For further information, see the report, *The Story Behind the Numbers: Understanding and Managing Child Support Debt*, OCSE Study (2008), available at: www.acf.hhs.gov/programs/cse/pol/IM/2008/im-08-05a.pdf.

Institution Data Match (MSFIDM), that can verify when a noncustodial parent has a new job, is claiming unemployment insurance benefits, or has quarterly wage information available. Data, not assumptions, are a more accurate method of determining the income and resources of noncustodial parents.

Accordingly, we propose to modernize standard practices for setting child support awards in order to set more accurate orders based on actual income. To address these changes, we propose a revision to § 302.56(a) to provide a State with sufficient time to address the revised requirements of § 302.56. Specifically, we propose that a State meet the requirements of § 302.56 within one year after completion of its next quadrennial review of its guidelines pursuant to § 302.56(e).

We propose to amend current § 302.56(c)(1) to require guidelines to take into consideration a noncustodial parent's "actual" earnings and income rather than "all" earnings and income. We believe this amendment will afford a State greater flexibility to set accurate orders that reflect a noncustodial parent's actual ability to pay support. The proposed revision will reflect common practice in some States and encourage operational updating in others. We specifically invite public comments on this proposed change.

Additionally, we propose a new criterion as § 302.56(c)(4). We propose that State guidelines take into consideration the noncustodial parent's subsistence needs (as defined by the State in its guidelines) and provide that amounts ordered for support be based upon available data related to the parent's actual earnings, income, assets, or other evidence of ability to pay, such as testimony that income or assets are not consistent with a noncustodial parent's current standard of living. "Subsistence" is defined in the Merriam-Webster dictionary as, "the minimum (as of food and shelter) necessary to support life."²⁸ A number of States incorporate a self-support reserve into their guidelines to recognize the noncustodial parents' subsistence needs. See PIQ-00-03 (September 14, 2000).²⁹ For example, New Jersey defines a self-support reserve as the amount of income that the

²⁸ See <http://www.merriam-webster.com/>.

²⁹ PIQ-00-03, *State IV-D Program Flexibility with Respect to Low Income Obligors—Imputing Income; Setting Child Support Orders and Retroactive Support; Compromising Arrearages; Referral to Work-Related Programs and Other Non-traditional Approaches to Securing Support*, available at: <http://www.acf.hhs.gov/programs/css/resource/state-iv-d-program-flexibility-low-income-obligors>.

State determines is necessary to ensure that a noncustodial parent "has sufficient income to maintain a basic subsistence level and the incentive to work so that child support can be paid."³⁰ This reserve amount is either disregarded or used to adjust the child support obligation so the noncustodial parent is able to meet his basic needs. The goal of this proposal is to establish an accurate child support order and obtain compliance with the order based upon the real circumstances of the parties and the best interests of the child. The IV-D agency must use the guidelines and take into consideration the obligated parent's ability to pay, or justify the deviation from the application of the guidelines. See PIQ-07-01 (February 6, 2007) (requiring similar considerations in the recoupment of medical expenses or birthing expenses owed to a State).³¹

The proposed regulation in § 302.56(c)(4) allows a State to impute income where the noncustodial parent's lifestyle is inconsistent with earnings or income and where there is evidence of income or assets beyond those identified. We recognize, however, that some noncustodial parents may not make support payments because they are unwilling to do so. An example of this would be a noncustodial parent who, despite good educational credentials and marketable job skills, simply refuses to work. In this situation the court may deviate from the guidelines. We specifically invite comments on this provision.

We also propose a new criterion as § 302.56(c)(5) to prohibit the treatment of incarceration as "voluntary unemployment." While the treatment of incarceration as voluntary unemployment used to be a common State guidelines policy, no more than a dozen States still maintain this policy. Treating incarceration as voluntary unemployment means that income is imputed and precludes modification of support orders. The research suggests that many incarcerated parents often leave prison with an average of \$15,000–\$30,000 or more in unpaid child support, with no means to pay

³⁰ Rules Governing the Courts of New Jersey, Appendix IX-A *Considerations in the Use of Child Support Guidelines*, Section 7.h., Self-Support Reserve, available at: <http://www.judiciary.state.nj.us/csguide/app9a.pdf>.

³¹ PIQ-07-01, *Use of Federal Income Tax Refund Offset Program to recoup medical expenses or birthing expenses owed to a State*, available at: <http://www.acf.hhs.gov/programs/css/resource/tax-refund-to-recoup-medical-or-birthing-expenses-owed-to-state>.

upon release.³² The research also indicates that orders that are unrealistically high may undermine stable employment and family relationships, encourage participation in the underground economy, and increase recidivism.³³ We want to highlight and to specifically invite public comments on this provision.

Additionally, we propose a new criterion as § 302.56(h) that will allow a State to recognize parenting time provisions when both parents have agreed to the parenting time provisions or pursuant to State guidelines. Parenting time is a legally distinct and separate right from the child support obligation. Nonetheless, in practical terms, parenting time is an important corollary to child support establishment because the child support agency, or finder of fact, needs information about the parenting time arrangements in order for the guideline amount to be effectively calculated. For the proposed parenting time provision, we want to emphasize that this is a minor change to existing regulations and merely allows a court or child support agency to include a parenting time agreement into the child support order when both parents have agreed to the parenting time provisions.

Including both the calculation of support and the amount of parenting time in the support order at the same time increases efficiency, and reduces the burdens on parents of being involved in multiple administrative or judicial processes at minimal cost to the child support program. When a State

has adopted child support guidelines that incorporate parenting time, the parenting time is integral to the support order calculation. “State child support guidelines that incorporate parenting time” refers to those States that have guidelines which incorporate allowances (or credits) for the amount of time children spend with both parents in the calculation of the child support order amount.

This new parenting time provision is not intended to require State IV-D agencies to undertake new activities. IV-D program costs must be minimal and incidental to IV-D establishment activities and would not have any impact on the Federal budget. Our proposed regulation is intended simply to allow the inclusion of an uncontested and agreed upon parenting time provision incidental to the establishment of a child support order when convenient to the parties, IV-D agency and court to do so. We believe that this provision will reflect the current practice in some States and will encourage program flexibility in others. We specifically invite comments on this provision.

Finally, we propose to redesignate current § 302.56(h) as § 302.56(i) and to revise this section. Current § 302.56(h) addresses the data that a State must consider as part of the review of a State’s guidelines pursuant to § 302.56(e) and requires that the analysis of the data must be used in the guidelines review to ensure that deviations from the guidelines are limited. We propose adding a new sentence at the end of this provision stating that deviations from the presumptive child support amount may be based on factors established by the State. Reasons for deviating from the guidelines in the best interest of children often include extraordinary medical expenses, and/or educational costs of additional dependents.

Section 302.70: Required State Laws

We propose changes to existing rules in section 302.70 to improve efficiency of state programs. OCSE has statutory authority to grant a State an exemption from implementing one or more of the laws and procedures required under section 466 of the Act if a State can demonstrate to the satisfaction of the Secretary that adoption of any one or all of the required laws and procedures will not increase the effectiveness and efficiency of the State’s Child Support Enforcement program. Additionally, OCSE may grant an exemption if a State has and uses a similar procedure which does not fully comply with the mandate, law, or procedure and the State shows

evidence that implementation of the mandatory procedure would not increase the efficiency and effectiveness of the State’s existing procedure. In the past, OCSE has granted such State exemptions for a period up to 3 years. However, we believe that changing the time period to 5 years would reduce paperwork while ensuring sufficient accountability and oversight.

We also propose to amend the provision in § 302.70(d)(2) that allows a State to request extensions of its IV-D State plan exemptions every 3 years. OCSE believes that the requirement to request an extension every 3 years is unnecessary and that a 5-year review would be more appropriate. There are two reasons for this proposed change. First, OCSE reviews and analyzes initial exemption requests thoroughly to ensure that the statutory requirements pursuant to section 466(d) of the Act are met. Second, in over 20 years of reviewing extension requests for approved exemptions, OCSE has never denied an extension request. This proposed amendment to request extensions of IV-D State plan exemptions every 5 years will not change OCSE’s authority to review and to revoke a State’s exemption at any time, but it will promote efficiency by reducing the burden imposed on States submitting exemption extension requests.

Section 302.76: Job Services

The evidence from recent research studies, including rigorous analyses of Texas’ *NCP Choices* and the New York’s *Strengthening Families Through Stronger Fathers Initiative*, indicates that child support-coordinated work programs can be an effective method of increasing child support payments to families.³⁴ Although many State Child Support Enforcement programs have entered into local or statewide partnerships to provide noncustodial parent employment activities, the cost of work activities provided under an individual work plan has not been allowed as a IV-D reimbursable cost.³⁵

³² See Esther Griswold and Jessica Pearson, “Twelve Reasons for Collaboration Between Departments of Correction and Child Support Enforcement Agencies,” *Corrections Today* (2003) which is available at: <http://www.thefreelibrary.com/Twelve+reasons+for+collaboration+between+departments+of+correction...-a0123688074>; Jessica Pearson, “Building Debt While Doing Time: Child Support and Incarceration,” *Judges’ Journal* (2004), which is available at: <https://peerta.acf.hhs.gov/uploaded/files/buildingdebt.pdf>; Nancy Thoennes, *Child Support Profile: Massachusetts Incarcerated and Paroled Parents* (2002), which is available at: <http://cntrpolres.qwestoffice.net/reports/profile%20%20CS%20among%20incarcerated%20%20%20paroled%20parents.pdf>; and Pamela Ovwigho, Correne Saunders, and Catherine Born, *The Intersection of Incarceration & Child support: A snapshot of Maryland’s Caseload* (2005), which is available at: <http://www.familywelfare.umaryland.edu/reports1/incarceration.pdf>. See also Federal Interagency Reentry Council, *Reentry Myth Buster on Child Support* (2011), available at: http://www.nationalreentryresourcecenter.org/documents/0000/1063/Reentry_Council_Mythbuster_Child_Support.pdf.

³³ U.S. Department of Health and Human Services, Office of Child Support Enforcement, *Incarceration, reentry and Child Support Issues: National and State Research Overview* (2006), available at: http://www.acf.hhs.gov/programs/cse/pubs/2006/reports/incarceration_report.pdf.

³⁴ See OCSE AT-97-10, Question and Answer 4, under Miscellaneous, available at: <http://www.acf.hhs.gov/programs/cse/pol/AT/1997/at-9710.htm>; OCSE PIQ-98-03, available at: <http://www.acf.hhs.gov/programs/cse/pol/AT/1997/at-9710.htm>.

Section 454(13) of the Act requires that the state plan must “provide that the State will comply with such other requirements and standards as the Secretary determines to be necessary to the establishment of an effective program for locating noncustodial parents, establishing paternity, obtaining support orders, and collecting support payments.” Pursuant to section 454(13) of the Act, we propose to add a new optional State plan provision, § 302.76, Job Services. The proposal permits the State to provide certain specified job services to eligible noncustodial parents pursuant to § 303.6(c)(5). If the State chooses this option, the state plan must include a description of the job services and eligibility criteria.

Section 303.3: Location of Noncustodial Parents in IV-D Cases

Section 303.3 requires IV-D agencies to attempt to locate all noncustodial parents or sources of information or assets where that information is necessary. In addition to the Federal Parent Locator Service, the existing regulation lists appropriate locate sources, including “police, parole, and probation records.” The proposed change to § 303.3(b)(1) specifically adds “corrections institutions” to this list.

This proposed change will encourage child support agencies to use the available locate tools already at their disposal to identify incarcerated noncustodial parents and assure that their orders are appropriate.

Section 303.6: Enforcement of Support Obligations

In addition to the State guidelines changes, we propose to update Federal regulations in § 303.6 requiring States to have procedures in place ensuring that civil contempt proceedings take into consideration the subsistence needs of the noncustodial parent.

We believe our effort to modernize current practices in this program area will encourage noncustodial parents to comply with child support orders, maintain legitimate employment, and minimize the accumulation of unpaid child support arrearages. This will ultimately help noncustodial parents to better fulfill their financial responsibilities toward their children.

Existing § 303.6(c) requires that the IV-D agency must maintain and use an effective system for enforcing a child support obligation by complying with

the provisions in existing § 303.6(c)(1) through (4). The IV-D agency must use this enforcement system for all cases referred to the IV-D agency or applying for services under § 302.33 in which a child support order has been established.

To ensure that the low-income noncustodial parent is able to comply with the court order, we propose to redesignate paragraph (c)(4) to (c)(5) and add new paragraph (c)(4) requiring States to have procedures in place ensuring that in civil contempt proceedings, such enforcement activities take into consideration the noncustodial parent’s subsistence level and income. In addition, we encourage States to develop procedures to take into account the noncustodial parent’s subsistence level in other child support enforcement procedures such as credit bureau reporting, license revocation, State tax refund offset, and liens. Some States have reported that they are already doing this based on discretionary needs-based analysis that the States have developed for implementing several of these enforcement tools. We invite comments on whether OCSE should regulate having procedures for considering the noncustodial parent’s subsistence level for other enforcement activities in the future.

In addition, we propose in new paragraph (c)(4) that the IV-D agency must ensure, in a civil contempt proceeding, that a purge amount the noncustodial parent must pay in order to avoid incarceration takes into consideration actual earnings and income and the subsistence needs of the noncustodial parent. In addition, we propose that a purge amount must be based upon a written evidentiary finding that the noncustodial parent has the actual means to pay the amount from his or her current income or assets. This proposal will assure a fundamentally fair determination of whether a noncustodial parent is able to comply with the court order in a child support civil contempt proceeding that can lead to jail time. This proposed provision is intended to assist States seeking to add due process protections in accordance with the U.S. Supreme Court’s recent decision in *Turner v. Rogers*, 564 U.S. __, 131 S Ct. at 2507 (2011), which noted that civil contempt proceedings must assure a “fundamentally fair determination . . . whether the supporting parent is able to comply with the support order.” As noted in *Turner*, “A court may not impose punishment in a civil contempt proceeding when it is clearly established that the alleged contemnor

is unable to comply with the terms of the order.” *Turner*, 131 S. Ct. at 2516, quoting *Hicks v. Feiok*, 485 U.S. 624, 638, n. 9.

Under this provision, a court would not be allowed to set a standardized purge payment amount in a IV-D case, including a fixed dollar amount, a fixed percentage of the arrearage, or a fixed number of monthly payments, unless the provisions of proposed § 303.6(c)(4) are met. Under proposed § 303.6(c)(4), a IV-D agency, for example, could implement procedures to assist the court in its determination, for example, by pre-screening cases to determine whether the case is appropriate for a contempt proceeding. The issue is not the use of contempt procedures per se, but contempt orders that, if not satisfied, can lead to jail time. While some States routinely use show cause or contempt proceedings, jail is not a typical outcome. We believe the proposed provision will provide safeguards to reduce the risk of erroneous deprivation of liberty in a child support civil contempt case. We note that a contempt order may not be monetary, but instead may require certain actions by the obligor, such as obtaining employment or participation in job search or other work activities. So long as the obligor has the present ability to do what is ordered of him or her, HHS believes such an order would appear to comply with the *Turner* decision.

In an effort to make the program more effective and to increase regular child support payments, we propose program standards related to providing certain job services for eligible noncustodial parents responsible for paying child support. These services are designed to complement traditional enforcement tools and to help noncustodial parents find suitable employment opportunities so they can support their children.

Stable child support collections depend on the economic stability of the noncustodial parent. In fact, over 70 percent of child support collections are made through wage withholding by employers.³⁶ So while the child support program works well for those parents who have steady incomes through regular employment or other means, it has been less effective for the 20 to 30 percent of noncustodial parents who have a limited ability to pay child support because of their limited

³⁶ DCL-13-16, OCSE Preliminary FY 2012 Data Report, is available at: <http://www.acf.hhs.gov/programs/css/resource/fy-12-preliminary-data-report-announcement>.

earnings.³⁷ For example, 70 percent of unpaid child support debt is owed by parents with no or low reported earnings.³⁸ Many poor noncustodial parents, however, have little or no connection to the formal labor market and therefore cannot pay consistent support.³⁹

Traditional enforcement tools often prove ineffective in getting unemployed noncustodial parents to pay child support.⁴⁰ In most cases, offering job services is a more effective approach for increasing the ability of unemployed noncustodial parents to get and keep a job and to pay child support on a regular basis, while holding parents accountable for supporting their children. As of February 2014, 30 States and the District of Columbia are operating 77 work-oriented programs for noncustodial parents with active child support agency involvement. Three of these States are operating statewide programs—Georgia, Maryland, and North Dakota. Many other States are operating programs in multiple counties. We estimate that roughly 30,000 noncustodial parents were served by these programs in 2013. Many of these programs are associated with better child support and employment outcomes, and evaluations show they usually lead to increased support payments.⁴¹

These programs build on a long history of national demonstrations providing employment services to noncustodial parents. The Parents' Fair Share (PFS) demonstration in the 1990s tested a comprehensive employment program designed to improve child support payments and other outcomes for unemployed noncustodial parents with children receiving public

³⁷ For further information, see Elaine Sorensen and Chava Zibman's report, *Poor Dads Who Don't Pay Child Support: Deadbeats or Disadvantaged?* (2001), available at: http://www.urban.org/UploadedPDF/anf_b30.pdf.

³⁸ For further information, see Elaine Sorensen, Liliana Sousa, and Simon Schaner's report, *Assessing Child Support Arrears in Nine Large States and the Nation* (2007), available at: <http://aspe.hhs.gov/hsp/07/assessing-CS-debt/>.

³⁹ For further information, see Elaine Sorensen and Helen Oliver's report, *Policy Reforms are Needed to Increase Child Support from Poor Fathers* (2002), available at: <http://www.urban.org/uploadedPDF/410477.pdf>.

⁴⁰ For further information, see Maria Cancian, Daniel R. Meyer, and Eunhee Han's article, *Child Support: Responsible Fatherhood and the Quid Pro Quo* (2011), *The ANNALS of the American Academy of Political and Social Science* 635:140.

⁴¹ U.S. Department of Health and Human Services, Administration for Children and Families, Office of Child Support Enforcement, *Work-Oriented Programs for Noncustodial Parents with Active Child Support Agency Involvement* (2014), available at: https://www.acf.hhs.gov/sites/default/files/programs/css/work_oriented_programs_for_non_custodial_parents_2014.pdf.

assistance. The evaluation of PFS found that this intervention increased reliable child support payments.⁴² Subsequent demonstrations or initiatives included the OCSE Responsible Fatherhood Programs (1998–2000), Partners for Fragile Families (2000–2003), Welfare-to-Work funded programs (1998–2004), and the Fathers at Work Demonstration (2003–2007). All of these programs aimed at increasing low-income parents' earnings and their child support payments, as well as increasing their involvement in their children's lives.⁴³ These programs tended to generate appreciable gains in child support payments.

We propose to add § 303.6(c)(5) to provide program standards related to the proposed optional State plan provision for job services for noncustodial parents owing child support through the IV-D program that are reasonably expected to increase child support payments. Our proposed job services program standards emphasize rapid labor force attachment and job retention strategies rather than long-term career development. While there are other contexts in which services to promote access to better jobs and careers are important, we have determined that in the context of unemployed noncustodial parents with child support responsibilities, federal matching funds should be limited to those services best calculated to lead to rapid employment entry and employment retention. States may determine whether to provide job services and how to design an evidence-informed employment program that improves child support outcomes. State child support work-oriented programs have implemented a number of promising strategies such as tiered employment, sectoral strategies, and job-driven training—training with a focus on business and labor market needs. Allowable job services are limited to those services which will help noncustodial parents find and maintain work so they can pay consistent and ongoing child support payments.

⁴² For further information, see Fred Doolittle, Virginia Knox, Cynthia Miller, and Sharon Rowser's report, *Building Opportunities, Enforcing Obligations: Implementation and Interim Impacts of Parents' Fair Share* (1998), available at: http://www.mdrc.org/sites/default/files/full_38.pdf.

⁴³ For further information, see Sarah Avellar, M. Robin Dion, Andrew Clarkwest, Heather Zaveri, Subuhi Asheer, Kelley Borradaile, Megan Hague Angus, Timothy Novak, Julie Redline, and Marykate Zukiewicz's report, *Catalog of Research: Programs for Low-Income Fathers* (2011), OPRE Report # 2011-20, available at: <http://www.acf.hhs.gov/programs/opre/resource/catalog-of-research-programs-for-low-income-fathers>.

To be eligible for job services, we propose that the noncustodial parent must have a IV-D case, have a current child support order, be unemployed or not making regular child support payments, not be receiving TANF assistance or assistance funded with State dollars counting toward TANF maintenance of effort, not be enrolled in a Supplemental Nutrition Assistance Program Employment and Training program under 7 CFR 273.7 and 273.24, not be receiving the same job services from Workforce Investment Act (WIA) under 20 CFR part 652 and parts 660–671, and not be receiving a Federal Pell Grant under 34 CFR part 690. The State child support agency may set additional eligibility criteria.

We propose that allowable job services (for which FFP will be available under § 304.20(b)(3)(ix)) include:

- Job search assistance;
- job readiness training;
- job development and job placement services;
- skills assessments to facilitate job placement;
- job retention services;
- certificate programs and other skills training directly related to employment, which may include activities to improve literacy and basic skills, such as programs to complete high school or a General Education Development (GED) certificate, as long as they are included in the same job services plan; and
- work supports such as transportation assistance, uniforms, or tools.

We have included a focused set of job services based on rigorous research that shows positive effects of these types of services on the employment of noncustodial parents and their child support payments.⁴⁴ This package includes certificate programs and other skills training directly related to employment. Previous successful programs have included a package of services including certificate programs and skills training, which only minimally increase the cost of this provision. We specifically invite comment on our proposed eligibility

⁴⁴ For further information, see Daniel Schroeder and Nicholas Doughty's report, *Texas Non-Custodial Parent Choices: Program Impact Analysis* (2009), available at https://www.texasattorneygeneral.gov/cs/ofi/ncp_choices_program_impact.pdf. Also, Kye Lippold, Austin Nichols, and Elaine Sorensen's report, *Strengthening Families Through Stronger Fathers: Final Impact Report for the Pilot Employment Programs* (2011), available at: <http://www.urban.org/uploadedpdf/412442-Strengthening-Families-Through-Stronger-Fathers.pdf>.

criteria and the list of allowable job services.

Subsidized employment is not included as an allowable job service above, but we ask for comment regarding its inclusion here. Subsidized employment programs provide jobs to people who cannot find employment in the regular labor market and use public funds to pay all or some of their wages. Evaluations of subsidized employment programs suggest that they are effective at providing jobs in the short term and can have valuable ancillary benefits, including reduced welfare receipt and recidivism among ex-offenders.⁴⁵ However, including subsidized employment in a jobs program can increase the cost of the program, and our principal focus here is on low-cost job services. We invite comments on the effectiveness of including subsidized employment as an allowable job service, including experience and evidence of the cost-effectiveness of using this strategy to improve regular child support payment from low-income parents, and if allowed, options we might consider for limiting the costs of subsidized jobs efforts, such as limits on the length or amount of the subsidy. Since payment of child support obligations is the goal of job services in child support, we also ask for comments on the potential implications of withholding child support from IV-D funded subsidized wages.

Section 303.8: Review and Adjustment of Child Support Orders

Effective review and adjustment of child support orders is an important step in ensuring that noncustodial parents comply with their child support obligations. Without an effective system to change child support orders to reflect actual ability to pay, arrears will accumulate. The unnecessary accrual of arrears is harmful because it hinders payment of regular support payments, leads to uncollectible debt, limits work opportunities for noncustodial parents, and interferes with parent-child

⁴⁵ For further information, see Cindy Redcross, Megan Millenky, Timothy Rudd, and Valerie Levshin. "More than a Job: Final Results from the Evaluation of the Center for Employment Opportunities (CEO) Transitional Jobs Program," OPRE Report 2011-18 (January 2012) available at: http://www.acf.hhs.gov/sites/default/files/opre/more_than_job.pdf. In addition, see Dan Bloom, Sarah Rich, Cindy Redcross, Erin Jacobs, Jennifer Yahner, and Nancy Pindus. "Alternative Welfare-to-Work Strategies for the Hard-to-Employ: Testing Transitional Jobs and Pre-Employment Services in Philadelphia," MDRC, (October 2009), available at: <http://www.acf.hhs.gov/programs/opre/resource/alternative-welfare-to-work-strategies-for-the-hard-to-employ-testing>.

relationships.⁴⁶ To address the needs of families with a parent in prison, numerous States, including Missouri, Nevada, Oklahoma, Texas, and West Virginia, already communicate with incarcerated parents about review and adjustment policies and the importance of requesting modification of their child support orders.⁴⁷

Section 466(a)(10) of the Act requires a State to have in effect laws requiring the use of procedures for review and adjustment of child support orders. Existing regulations in § 303.8 specify the requirements that a State must meet with respect to seeking adjustments to child support orders in IV-D cases. The current regulation establishes both a required system for review and adjustment for cases with assignments under part A of the Act and a means of accessing the review and adjustment process for other cases based upon a request from either parent. We propose to redesignate § 303.8(b)(2) through (b)(5) as (b)(3) through (b)(6). Also, we propose to add a new paragraph (b)(2) that would allow the child support agency to elect in its State plan the option to initiate the review of a child support order and seek to adjust the order, if appropriate, after being notified that a noncustodial parent will be incarcerated for more than 90 days. This review would not need a specific request, provided both parents had received notice. In electing this State plan option, the State may also need to consider whether further changes to State laws are required to implement this procedure. In most States, incarcerated parents must take affirmative steps to have their orders modified. We have found that very few incarcerated parents petition for a modification, even though their order could be suspended during incarceration. As a result, by the time that noncustodial parents are released from prisons, their child support arrearages have grown to very high levels, and may help drive the noncustodial parents into the underground economy to avoid paying support and may create an additional

⁴⁶ For further information, see Carolyn J. Heinrich, Brett C. Burkhardt, and Hilary M. Shager, *Reducing Child Support Debt and Its Consequences: Can Forgiveness Benefit All?* (2010), available at: http://www.irp.wisc.edu/research/childsup/cspolicy/pdfs/2007-09/FamiliesForward_3_19_10.pdf.

⁴⁷ For further information, see Department of Health and Human Services, Office of Child Support Enforcement, "Voluntary Unemployment, Imputed Income, and Modification Laws and Policies for Incarcerated Noncustodial Parents—Child Support Fact Sheet, available at: http://www.acf.hhs.gov/sites/default/files/ocse/paid_no4_companion.pdf.

barrier to parent-child contact.⁴⁸ A number of States, including Arizona, California, Michigan, Vermont, and the District of Columbia permit their child support agency to initiate review and adjustment upon notification that the noncustodial parent has been incarcerated.⁴⁹ During the first year of implementing this new procedure, one State was able to modify over 300 orders resulting in an average of \$5,156 in arrearages being avoided per case.⁵⁰ We specifically invite comments on this provision, including any experiences commenters have had in trying to adjust orders for incarcerated noncustodial parents.

In addition, we propose to redesignate existing § 303.8(b)(6) which requires notice "not less than once every three years," to § 303.8(b)(7) and (b)(7)(i) and to add a new paragraph (b)(7)(ii) to add that a notice of the right to request a review and adjustment is also required when the IV-D agency has knowledge that a parent is incarcerated. Alabama and Texas provide inmates with information about the child support program and the steps needed to request a review of their child support order.⁵¹ Providing notice is a necessary first step in informing both parents of the ability to request a modification of their order when a parent has been incarcerated.

In addition, § 303.8 specifies requirements that a State must meet with respect to seeking adjustments to child support orders in IV-D cases. Existing paragraph (d) of this section specifies that if the review indicates the

⁴⁸ For further information, see the *Report of the Re-Entry Policy Council: Charting the Safe and Successful Return of Prisoners to the Community*, available at: <http://www.reentrypolicy.org/publications/1694/file>. See also Carmen Solomon-Fears, Gena Falk, and Adrienne L. Fernandes-Alcantara, *Child Well-Being and Noncustodial Fathers* (2013), Congressional Research Service.

⁴⁹ In 2012, Vermont enacted Senate Bill 203 that allows the child support program to file a motion to modify child support if a party is incarcerated from more than 90 days. For information about the other jurisdictions, see Department of Health and Human Services, Office of Child Support Enforcement, "Voluntary Unemployment, Imputed Income, and Modification Laws and Policies for Incarcerated Noncustodial Parents" (2012), Project of Avoid Increasing Delinquencies—Child Support Fact Sheet, available at: http://www.acf.hhs.gov/sites/default/files/ocse/paid_no4_companion.pdf.

⁵⁰ For further information, see the final report on *Modifying Orders for DC Prisoners: An 1115 Demonstration Project* (2006), abstract available at: http://archive.acf.hhs.gov/programs/cse/grants/abstracts/by_state.html.

⁵¹ For further information, see Department of Health and Human Services, Office of Child Support Enforcement, "Voluntary Unemployment, Imputed Income, and Modification Laws and Policies for Incarcerated Noncustodial Parents—Child Support Fact Sheet, available at: http://www.acf.hhs.gov/sites/default/files/ocse/paid_no4_companion.pdf.

need to provide for the health care needs of the children in the order, such a need must constitute adequate justification under State law to petition for adjustment of the order, regardless of whether an adjustment in the amount of child support is necessary. Existing paragraph (d) restricts consideration of Medicaid as medical support.

Since current OCSE policy does not consider the eligibility for or receipt of Medicaid to meet the health care needs of the child(ren), States are required to include private health insurance or establish a cash medical support order to address the child(ren)'s health care needs pursuant to § 303.31(b). Although this has been a longstanding policy,⁵² we realize that our existing regulation restricts existing State flexibility available under the current statute and that it is no longer appropriate to restrict Medicaid, CHIP, and other coverage plans available in the State as part of medical support. In order to provide a State with flexibility to establish and enforce medical support obligations whenever a parent has access to health care coverage—private or public—at a reasonable cost, consistent with section 452(f) of the Act, OCSE proposes to delete the last sentence of paragraph (d) of § 303.8 which prohibits Medicaid from being considered medical support.

Section 303.11: Case Closure Criteria

Case closure, § 303.11, is another area where changes in existing regulations will increase program flexibility, effectiveness, and efficiency. Case closure regulations were initially promulgated in 1989. Since then, advances in technology have greatly increased the likelihood that if State IV-D agencies have sufficient information about a noncustodial parent, they can generally locate the noncustodial parents and find legitimate income and assets.

The goal of the proposed case closure regulations is to direct resources for cases where collections are possible and to ensure that families have more control over whether to receive child support services. Under current case closure regulations, States are not permitted to close cases except under certain narrow and specific circumstances. This can mean that a State may be required to keep a case open for decades, well after the child

has emancipated, and regardless of whether the family wants continued services. State case closure procedures are automated and subject to audits.

The National Council of Child Support Directors provided OCSE with recommendations for improving the effectiveness and efficiency of the case closure criteria, while at the same time, ensuring that resources are directed to working cases and that children receive services whenever there is any reasonable likelihood for collections in the future. Additionally, we sought Tribal input in a formal fashion as discussed in the Tribal Impact Statement.

The proposals in this regulation are intended to carry out good customer service and management practices in order to provide needed services where there is any reasonable chance to successfully work a case. The proposed regulation also ensures that safeguards are in place to keep recipients apprised of case closure actions. Cases are not closed without taking into consideration any new information provided by the affected parties.

Section 454(4)(A)(ii) of the Act requires a State to provide IV-D services to any individual who files an application for services. In addition, sections 408(a)(3) and 454(29) of the Act require TANF assistance recipients to assign their rights to child support and to cooperate with the child support program in obtaining support. Existing regulations allow a State to close IV-D cases only under certain restricted circumstances even when the State is no longer able to provide effective and productive child support services. In all cases where case closure is proposed, recipients of child support services are given notice of the intent to close the case and are provided an opportunity to respond with information and to request that the case be kept open or, after the case is closed, to reopen the case.

In an effort to modernize our regulations, we propose several new case closure criteria and revisions to existing criteria in § 303.11 that are intended to provide families with effective child support enforcement services, promote State flexibility, and ensure the efficient use of State and Federal resources. While the NPRM expands the number of case closure criteria, it also strengthens the case closure notice provisions to ensure that recipients are kept apprised of case closure actions and understand how to request additional services. The proposals in this regulation aim to balance good management and workable administrative decisions with providing needed services, always erring in favor

of including any case in which there is a reasonable chance of success.

In § 303.11(b), we propose to clarify that a IV-D agency is not required to close a case that is otherwise eligible to be closed under that section. Case closure regulations are designed to give a State the option to close cases, if certain conditions are met, and to provide a State flexibility to manage its caseload. If a State elects to close a case under one of these provisions, we propose the State maintain supporting documentation for its decision in the case record. We emphasize that closing a case will not affect the legality of the underlying order. The child support order, including any payment or installment of support such as arrearages due under the order, remains in effect and legally binding.

We propose a new criterion as § 303.11(b)(2) that will allow a State to close cases where there is no current support order and all arrearages are owed to the State. This provision is intended to afford the State more resources to enforce those cases where debt is owed to families rather than to the State.

We propose a new criterion as § 303.11(b)(3) that will allow the IV-D agency to close arrearages-only cases against low-income senior citizens who are entering or have entered long-term care placement, and whose children have already reached majority age. In addition, these noncustodial parents must have no income or assets available above the subsistence level that could be levied or attached for support. The first generation of orders in the IV-D program was issued more than 35 years ago. We recognize that a portion of our noncustodial parent population is aging, many of whom may depend on fixed incomes. Old child support debt, carried well after the children have become adults and sometimes parents themselves, could pose a barrier for aging parents to obtain affordable housing, basic income, and health care. We believe enforcement efforts against these noncustodial parents are not only ineffective, but are also an inefficient way to expend child support resources. We would like to hear from States and other stakeholders about their experiences working with low-income, aging noncustodial parents, and receive recommendations for this rule.

OCSE has redesignated § 303.11(b)(2) as (b)(4) and proposes to add a new criterion as § 303.11(b)(5) which allows a State to close cases when the noncustodial parent is either living with the minor children as the primary caregiver or is a part of an intact two-parent household, and the IV-D agency

⁵² For further information, see AT-91-02, <http://www.acf.hhs.gov/programs/cse/pol/AT/1991/at-9102.htm>, AT-92-02, <http://www.acf.hhs.gov/programs/cse/pol/AT/1992/at-9202.htm>, AT-92-12, <http://www.acf.hhs.gov/programs/cse/pol/AT/1992/at-9212.htm>, and AT-08-08, <http://www.acf.hhs.gov/programs/cse/pol/AT/2008/at-08-08.htm>.

has determined that services either are not appropriate or are no longer appropriate. This provision is intended to address situations where parents reconcile so services are no longer needed, as well as intact two-parent families where one parent works or is seeking work out of State and child support services were never needed. We have also redesignated paragraph (b)(3) as (b)(6).

When States have made repeated efforts over time to locate noncustodial parents, and those efforts are unsuccessful because of inadequate identifying or location information, States should be allowed to close those cases and to focus efforts on productive cases. Current § 303.11(b)(4)(i) permits a State to close cases that have identifying information, like full names, dates of birth, and verified Social Security Numbers, after 3 years, in which locate efforts have been exhausted. For those cases with sufficient identifying information and with enhanced locate tools, such as the National Directory of New Hires (NDNH) that provides current data on new hires and quarterly wage data and the Federal Case Registry (FCR), as well as tax information from the Internal Revenue Service and financial information from financial institutions data match, State experience has been that if a State is able to locate parents and assets, it is generally within 2 years. Moreover, the NDNH data are only retained for 2 years. Given that, we propose to redesignate paragraph (b)(4) as paragraph (b)(7) and to revise the 3-year locate period in newly designated § 303.11(b)(7)(i) to a 2-year locate period. Given the low success rate for collections after 2 years, the extra time and resources that would have been used to locate may be better used to enforce other cases where appropriate.

Similarly, under current § 303.11(b)(4)(ii), a State is allowed to close cases after 1 year if it does not have sufficient identifying information, such as a date of birth or a verified Social Security Number, to initiate an automated locate effort. For the same reasons noted in the previous paragraph, we propose changing the locate period from a 1-year period to a 6-month period in proposed § 303.11(b)(7)(ii).

Also, proposed § 303.11(b)(7)(iii) adds a provision to allow a State to close cases after a 1-year period when there is sufficient information to initiate an automated locate effort, such as full names and dates of birth, but locate interfaces are unable to verify Social Security Numbers. OCSE implemented an interface between its Federal Parent

Locator Service (FPLS) and the Social Security Administration's Enumeration Verification System (EVS) in 1996. FPLS is a computerized national location network that provides States with the most timely, accurate information available to locate noncustodial parents for the purpose of establishing or enforcing child support orders. The EVS system is an automated process to verify, correct, and identify Social Security Numbers. It supports the correct identification of individuals when incomplete or duplicate Social Security Numbers are found in child support enforcement records. States are required to use EVS and to obtain as much pertinent information as possible from custodial parents. However, if after 1 year neither EVS nor FPLS are able to verify Social Security Numbers, OCSE believes that case closure is warranted. Without sufficient information to use enhanced locate tools like EVS and the FPLS, locate efforts are futile and work time may be better allocated to other areas of enforcement.

Current § 303.11(b)(5) lists a limited number of circumstances under which a State may close cases if it determines a noncustodial parent cannot pay support for the duration of the child's minority. We propose to redesignate the existing provision as § 303.11(b)(8) and to add the phrase "the child has reached the age of majority" to the first subparagraph under the proposed provision. This will allow a State to close both current support and arrearages-only cases if the circumstances described in proposed (b)(8) are met. We have also revised the proposed language by moving the phrase, "and shows no evidence of support potential" earlier in the paragraph to clarify that this condition applies to all of the circumstances described in proposed (b)(8). The current provision also allows a State to close cases in which the noncustodial parent has been incarcerated "with no chance for parole" and has no income or assets above the subsistence level, which could be levied or attached for support. We believe the "no chance for parole" requirement unduly restricts a State's flexibility to determine that the child support case is unproductive and should be closed. Therefore, we propose to eliminate the phrase "with no chance for parole." We also propose to add a new provision that will allow a State to close cases in which the noncustodial parent cannot pay support and shows no evidence of support potential despite multiple referrals for services over a 5-year period, which have not been successful. A State will have the

discretion to determine what services are appropriate and available under State law. Finally, we have added that these cases can only be closed under proposed (b)(8) if the noncustodial parent's does not have income or assets "above the subsistence level." We believe that the IV-D agency should only pursue enforcement on these cases if the noncustodial parent has income or assets above the subsistence level (as defined by the State).

We have also added a new criterion § 303.11(b)(9) to allow a State to close a case when a noncustodial parent's sole income is from Supplemental Security Income (SSI) payments made pursuant to sections 1601 *et seq.*, of title XVI of the Act, 42 U.S.C. 1381, *et seq.*, from both SSI and benefits pursuant to title II of the Act, or from other needs-based benefits. We are including the concurrent SSI/title II beneficiary in this proposal, because the noncustodial parent's income level is low enough to be eligible for SSI. Therefore, we believe that these cases should be closed since they would be unproductive for the IV-D agency to pursue. Additionally, we seek comments on whether additional guidance is warranted to strengthen protection of SSI, e.g., requiring enhanced notice provisions recognizing these exceptions to garnishment. We have also redesignated existing paragraphs (b)(6)–(b)(8) as paragraphs (b)(10)–(b)(12).

As previously discussed, we proposed under § 302.33(a)(6) to allow a State to offer limited child support services. Currently, there is no corresponding provision that allows a State to close these cases opened under § 302.33(a)(6), without first waiting for the recipient of services to request case closure. Therefore, we propose a new criterion § 303.11(b)(13) that will allow the State to close a non-IV-A case after a limited service under § 302.33(a)(6) has been completed without providing the notice under § 303.11(d)(1). (Section 302.33(a)(6) requires that the individual be notified when applying for limited service(s) that the case will be closed after the limited service is completed.) However, after the case is closed, the IV-D agency must notify the recipient in accordance with § 303.11(d)(6). We have also redesignated current paragraph (b)(9) to (b)(14).

In non-IV-A cases, or cases where the custodial parent and/or child(ren) does not receive cash assistance from the State, the State is required to distribute child support payments to the recipient of child support services. Although many State child support programs distribute payments through debit cards, it remains extremely important for the

recipient of services to keep the State informed of his or her current mailing address to ensure that the case can be processed effectively. If a State is unable to contact a recipient of services, current § 303.11(b)(10) requires the State to make an attempt of at least one letter sent by first-class mail to the recipient's last known address within 60 calendar days before beginning the process of case closure. If the attempt fails and the State does not hear from the recipient of services within the 60 days, under current paragraph (c), the State must then send another letter to inform the recipient of services of its intent to close the case in 60 days. In situations where the letter sent in the first attempt is returned by the Postal Service as undeliverable with no forwarding address, the State must still wait the full 60 days from the date the letter was mailed before sending the 60-day case closure notice. We intend to streamline the case closure process by eliminating the 60-day wait requirement under proposed § 303.11(b)(15). We consider it to be more efficient to allow a State to attempt to contact the recipient of services through at least two different methods. With today's technology, there are many different options when it comes to notifying clients, such as first-class mail, electronic mail, text messaging, and telephone calls. A State will have discretion to determine what methods are most appropriate on a case-by-case basis. As emphasized in Action Transmittal 10-11, "Alternative Methods to Meet the Monthly Requirement," however, the underlying policy goal is effective notice.

We redesignated existing paragraphs (b)(11)–(b)(14) as (b)(16)–(b)(19) and propose a new criterion at § 303.11(b)(20) to provide a State with flexibility to close cases referred inappropriately by the IV-A, IV-E, and Medicaid programs. We encourage State IV-D agencies and assistance programs, like IV-A, IV-E, and Medicaid, to work together to define referral criteria to ensure only appropriate cases are referred to the IV-D agency. The term *appropriate* is used in the regulation because section 454(4)(A) of the Act requires IV-D agencies to provide services "as appropriate." Primarily due to automated interfaces between programs, a very small number of cases referred to the IV-D agency are plainly inappropriate for child support enforcement services, but existing regulations do not provide State IV-D agencies with a basis for closing such cases. We believe that these programs and child support agencies work hard to communicate regularly and effectively

to assist each other in updating their respective case information to ensure that referrals are made appropriately.

However, there are rare instances when a State inadvertently opens cases inappropriately referred for child support services. Therefore, we recommend a new criterion that will allow a IV-D agency to close a case that has been opened to establish or enforce child support because of an inappropriate referral from another assistance program.

For example, in assistance cases which are referred for IV-D services, both parents may be living at home and functioning as an intact family although the parents are not married and paternity has not been established. Since both parents are living with their child, and there is no noncustodial parent, the IV-D agency may determine that pursuing the case is not appropriate for child support enforcement. Another example could be an intact family that is eligible for TANF. A married parent applied for TANF, while the other parent has left the area to find work. Since the family continues to function as an intact family, although one parent is away for economic reasons, the IV-D agency may determine that it is detrimental to the family to pursue child support. In these circumstances, we believe the IV-D agency should be in communication with the IV-A agency to ensure that the decision to close the IV-D case will not be viewed by the IV-A agency as noncooperation by the recipient of services.

Another example of an inappropriate referral would be for a family receiving a non-recurring, short-term TANF benefit that does not fall within the definition of TANF assistance under § 260.31 as required by existing law and policy⁵³ that was unnecessarily referred to the IV-D program in error. In cases where there is no legal authority to require an assignment and the case was inappropriately opened by the IV-D agency, we believe that the IV-D agency should be able to close the case.

Also, in IV-E cases which are referred to the IV-D agency, there may be cases where children are expected to be in foster care for only a short time before being reunited with their family or before adoption proceedings are finalized. The IV-D agency may determine that it is not appropriate to pursue child support. Finally, as discussed above in proposed § 302.33(a)(4), we provide State IV-D agencies with additional flexibility to

determine whether notice to a family in which a child no longer receives foster care maintenance payments is appropriate.

While we believe that inappropriate referrals are limited in number, we believe a State should have the flexibility to close these cases on a case-by-case basis under proposed § 303.11(b)(20). We specifically seek public comment on whether the proposed provision in § 303.11(b)(20) effectively addresses the rare circumstance where an inappropriate referral may have been made or whether the language is too broad. We are interested in the pros and cons of this proposal and if you have any additional suggested criteria or revisions to ensure that a State is accorded the flexibility to close cases where inappropriate referrals have been made.

In addition, we plan to update case closure regulations to encourage efficient case transfer between State and Tribal IV-D programs. Originally, when case closure regulations were written in 1989, there were no Tribal IV-D programs. Presently, there are over 50 fully operational Tribal IV-D programs. We invited Tribal leaders to engage in both written and face-to-face consultations to discuss issues and proposed solutions related to intergovernmental coordination. We also met with Tribal IV-D directors in several sessions around the country to have a conversation regarding Tribal Medical Child Support. We specifically discussed case transfer and case closure issues that will require a State IV-D agency to close Medicaid reimbursement cases that involve children receiving services from the Indian Health Service (IHS) when appropriate. We also discussed case transfer and case closure issues with State child support directors. As a result of these efforts, we received comments that helped us develop this NPRM.⁵⁴

In recent years, OCSE received a number of inquiries asking whether a State IV-D agency may close a case that has been transferred to a Tribal IV-D program and under what circumstances. OCSE responded to those inquiries in Policy Interpretation Question Tribal (PIQT) 05-01.⁵⁵ PIQT 05-01 clarified that a State may transfer a case to a Tribe if the custodial parent wishes to receive services from the Tribal IV-D agency rather than from the State IV-D agency, and requests that the case be transferred or consents to the transfer. The guidance stated that such transfers,

⁵³ For further information, see AT-98-24, August 19, 1998, available at: <http://www.acf.hhs.gov/programs/cse/pol/AT/1998/at-9824.htm>.

⁵⁴ See Tribal Impact Statement in preamble.

⁵⁵ Available at: <http://www.acf.hhs.gov/programs/cse/pol/PIQT/2005/piqt-05-01.htm>.

at the request of or with the consent of the custodial parent, may be appropriate if there are no assigned arrearages owed to the State. In other words, under existing policy, a State could close and transfer cases to Tribes only if there were no assigned arrearages owed to a State that required the State to maintain an open IV-D case. Similarly, if a Tribe had a current case but the parent requested that it be transferred to a State IV-D program and the Tribe no longer had an interest in the action, the Tribe could close and transfer the case to the State IV-D program. The current policy does not address cases where there is no current assignment. The State may transfer such cases to a Tribal IV-D agency for appropriate action.

Proposed § 303.11(b)(21) will permit a State the flexibility to close the case if it has been transferred to a Tribal IV-D agency, regardless of whether there is a State assignment. It will also allow a State to reduce data management demands by eliminating duplicate and outdated cases and to better allocate its limited resources to other enforcement activities. Before a case can be transferred to a Tribal IV-D agency, we propose that either the recipient of services must request the transfer or the State must notify the recipient that the case will be transferred to the Tribal IV-D agency and obtain the recipient's consent. We also propose that a State deems consent if the recipient does not respond to a notice to transfer within 60 calendar days from the date notice was provided. Although not a condition of eligibility, some Tribal IV-D applications for services contain a box that may be checked to affirm a Tribal applicant's consent to have the case transferred from a State IV-D agency to a Tribal IV-D agency. This may be regarded as sufficient proof of consent for transferring and closing the case. We specifically request comments from States, Tribes, and other stakeholders on this additional flexibility for States to transfer and close cases notwithstanding a State assignment, and will consider all comments and recommendations received before issuing the final rule. Finally, we propose the State notify the recipient that the case has been transferred to the Tribal IV-D agency.

A State has the authority to accept less than the full payment of state-assigned arrearages on the same grounds that exist for compromise and settlement of any other judgment owed to the State.⁵⁶ Therefore, a State may

enter into an agreement with a Tribal IV-D agency to permit the Tribe to compromise any state-assigned arrearages.

Any State debt owed under the pre-existing order remains in effect and legally binding. Once a case is closed and transferred to a Tribal IV-D program, the Tribal IV-D program will continue to adhere to Federal regulations and must extend the full range of services under its IV-D plan as required by § 309.120(a). We strongly urge the State and the Tribe to work together in these instances to reach agreement on steps to take that will result in effective intergovernmental cooperation, smooth case transfer, less confusion about case ownership, and ongoing support payments to families, including the possibility of compromising arrearages permanently assigned to the State and/or entering into repayment agreements.

We believe there is little likelihood a State can successfully perform IV-D functions in many Tribal cases, especially in cases with default child support orders. Although some child support enforcement services have been provided through cooperative agreements between Tribes and States and have helped bring child support services to some Tribal families, Indian families may experience some difficulty in getting IV-D services from State IV-D programs.

One reason is because the authority of State and local government is either limited or nonexistent within much of Tribal territory, while jurisdiction is concurrent in other areas, as in States that adhere to Public Law 83-280. In addition, practical obstacles exist to State enforcement against Tribal members, particularly those low-income obligors who lack formal employment or who work in a tribally-owned business. Finally, Tribal IV-D programs incorporate certain tools and procedures not available to State IV-D programs, such as policies permitting in-kind support payments or traditionally-based dispute resolution procedures.

In order to better serve Indian families, we propose a new criteria under § 303.11(c) that will require a State IV-D agency to close a Medicaid reimbursement referral based solely upon health care services, including contract health services, provided through an Indian Health Program. The IHS is responsible for providing health care to American Indians and Alaska Natives under the Snyder Act. See 25 U.S.C. 13 (providing that the Bureau of Indian Affairs (BIA) will expend funds as appropriated for, among other things, the "conservation of health" of Indians);

42 U.S.C. 2001(a) (transferring the responsibility for Indian health care from BIA to IHS). IHS provides such care directly through federal facilities and clinics, and also contracts and compacts with Indian tribes and tribal organizations to provide care pursuant to the Indian Self Determination and Education Assistance Act (ISDEAA), Pub. L. No. 93-638 (codified at 25 U.S.C. 458aaa-18(b)). In addition, the Snyder Act authorizes IHS to pay for medical care provided to IHS beneficiaries by other public and private providers as contract health services (CHS). The term "Indian Health Program," defined at 25 U.S.C. 1603(12), encompasses the different ways health care is provided to American Indians and Alaska Natives.

Pursuant to 25 U.S.C. 1621e, IHS and Indian tribes seek to ensure maximum resources to perform this responsibility, and require individuals with third party insurance pay for health care services provided to IHS-eligible individuals through health programs administered under IHS authority, including contract health services (CHS). Third party payers or alternate resources include Medicaid, private insurance, or other health benefits coverage for individuals who receive health care services through such programs. An IHS-eligible patient is not considered a third party payer, and his/her resources are not considered to be alternate resources under 25 U.S.C. 1621e. Likewise, the parents of an IHS-eligible minor are not considered alternate resources under 25 U.S.C. 1621e. Custodial and noncustodial parents of IHS-eligible patients (or their resources) should not be distinguishable for purposes of payment. In other words, the IHS will not seek payment from noncustodial parents of IHS-eligible children who receive health care services provided through Indian Health Programs.

Consistent with the IHS authority, the Centers for Medicare & Medicaid Services (CMS) propose conforming changes to Medicaid policy concerning third party liability and medical support with respect to IHS-eligible children who receive health services, including CHS, through an Indian Health Program. Under existing IHS policy, noncustodial parents are not considered liable third parties and their assets are not available for medical support for such services. Recognizing that the IHS has primary responsibility for determining the medical support obligations from Indian families for services provided through Indian Health Programs, CMS proposes to amend 42 CFR 433.152(b)(1), consistent with IHS policy, to require that State Medicaid agencies not refer

⁵⁶ For further information see PIQ-00-03, available at: <http://www.acf.hhs.gov/programs/cse/pol/PIQ/2000/piq-00-03.htm>, and PIQ-99-03, available at <http://www.acf.hhs.gov/programs/cse/pol/PIQ/1999/piq-9903.htm>.

cases for medical support enforcement services when the Medicaid referral is based solely upon health care services, including contract health services, provided through an Indian Health Program (as defined at 25 U.S.C. 1603(12)) to a child who is eligible for health care services from the Indian Health Service (IHS). This policy remedies the current inequity of holding noncustodial parents personally liable for services provided through the Indian Health Programs to IHS-eligible families that qualify for Medicaid, while not holding noncustodial parents personally liable for the same services for IHS-eligible families that do not qualify for Medicaid. Research indicates that most noncustodial parents of IHS-eligible children who qualify for Medicaid have difficulty meeting their child support obligations.⁵⁷ Requiring them, but not parents of children who do not qualify for Medicaid, to use their personal resources to pay for health care provided through Indian Health Programs is unreasonable. To be clear, CMS, like IHS, will continue to require that State agencies seek reimbursement from any private insurance or other health care coverage purchased for the child, including coverage purchased by the noncustodial parent out of the parent's personal assets. The proposed revision to 42 CFR 433.152(b)(1) also eliminates reference to 45 CFR Part 306 which was repealed in 1996.

In light of the IHS's policy, OCSE and CMS propose that State Medicaid agencies not refer such cases and that IV-D agencies that receive Medicaid reimbursement referrals based solely on health care services, including contract health services, provided to IHS-eligible children through an Indian Health Program, will be required to close such cases, as these cases will have been inappropriately referred. Pursuant to

⁵⁷ For further information, see Laudan Y. Aron's report, *Health Care Coverage Among Child Support Eligible Children* (December 2002), available at <http://aspe.hhs.gov/hsp/CSE-health-ben02/index.htm>; Laura Wheaton's report, *Nonresident Fathers: To What Extent Do They Have Access to Private Health Insurance?*, available at <http://fatherhood.hhs.gov/ncp-health00/index.htm>; Cara James, Karyn Schwartz and Julia Berndt, *A Profile of American Indians and Alaska Natives and Their Health Coverage* (June 2000), available at <http://www.kff.org/minorityhealth/7977.cfm>; Sorensen, Elaine, *A National Profile of Nonresident Fathers and Their Ability to Pay Child Support* (1997), available at <http://www.jstor.org/stable/10.2307/353782>; Elaine Sorensen, Liliana Sousa, and Simon Schaner, *Assessing Child Support Arrears in Nine Large States and the Nation* (2007), available at: <http://aspe.hhs.gov/07/assessing-CS-debt/>; and U.S. Department of Interior, Bureau of Indian Affairs, *2005 American Indian Population and Labor Force Report*, available at: <http://www.bia.gov/cs/groups/public/documents/text/1dc-001719.pdf>.

IHS' policy and CMS' proposed policy, there would be no medical child support reimbursement obligation to pursue against any custodial or noncustodial parents, and any recovery from insurance policies would be outside the scope of the State IV-D agencies' authority. It is our understanding that such Medicaid referrals are common. The proposed corresponding child support case closure rule will make clear that State IV-D agencies should not seek medical child support based on the Medicaid referrals.

Finally, we propose to redesignate existing § 303.11(c) as § 303.11(d) and to reorganize the provisions into subparagraphs for clarity.

Under § 303.11(d)(1) and (2), we also propose conforming changes to address renumbered and proposed provisions that either require notice to the recipient of services or, the initiating agency in an intergovernmental case that meet the criteria for closure, 60 calendar days prior to closing the case of the State's intent to close the case. In addition, we have added a proposal in § 303.11(d)(4) for a case meeting the criteria for closure in paragraph (b)(20) or (c) that the IV-D agency must notify the referring agency, in a record, 60 calendar days prior to closure of the case of the State's intent to close the case. Additionally, we propose in § 303.11(d)(5) that if the referring agency does not respond to the notice or does not provide information demonstrating that child support services are needed for the case, the IV-D agency may close the case. However, when the case is closed, the IV-D agency must notify the recipient of services that the case was closed under proposed paragraph (d)(6).

In § 303.11(d)(6), we are also proposing a new requirement for cases closed pursuant to paragraphs (b)(13) and (d)(5). The State must notify the recipient that the case has been closed within 30 calendar days of closing the case. This notice must also provide information regarding reapplying for additional child support services and the consequences of receiving IV-D services, including any State fees, cost recovery, and distribution policies. If the recipient reapplies for child support services in a case that was closed pursuant to paragraph (b)(13), the recipient will complete a new application for IV-D services and pay any applicable fee. If the recipient reapplies for services in a case that was closed pursuant to paragraph (d)(5), the recipient will complete a new application for IV-D services but will not be charged a fee since the case was originally opened through an

inappropriate referral. We specifically seek comments related to these post-closure notices.

It is important to note that after a IV-D agency has closed a case pursuant to the procedures outlined in § 303.11, the former recipient of services may reapply for services at any time pursuant to the last sentence of existing § 303.11(c), which we propose to make a new subparagraph and redesignate as § 303.11(d)(7). Given that a State will have more discretion to close unproductive cases under the proposed rule, we request comments on redesignated § 303.11(d)(7) and whether the language is sufficiently clear to ensure that a former recipient of services is able to reapply for and open a IV-D case. Finally, we redesignated existing paragraph (d) as proposed paragraph (e).

Section 303.31: Securing and Enforcing Medical Support Obligations

While the child support program has long been involved with securing health care coverage for children, in the past, we have focused narrowly on private coverage available through a noncustodial parent's employer rather than taking full advantage of the many coverage options available to children. However, the Deficit Reduction Act of 2005 (DRA) (Pub. L. 109–171) made significant improvements to medical child support by emphasizing the importance of securing health care coverage. The DRA provided that the child support agency may look to either or both parents to provide medical support, including health care coverage and cash payments to defray the child's health care costs. The DRA recognized that custodial families are a common, and in many cases, a preferred source of insurance coverage for their children because it is often simpler for children to be on the same policy as their residential parent. The DRA also acknowledged that the cost of coverage is a critical consideration. However, existing medical support regulations focus narrowly on private insurance and do not allow families the opportunity to choose from the full range of health care coverage options that may be available to them.

In general, families in the Child Support Enforcement program have limited access to employer-sponsored private insurance and are disproportionately eligible for Medicaid and the Children's Health Insurance Program (CHIP).⁵⁸ A national research

⁵⁸ For further information, see Laudan Y. Aron's report, *Health Care Coverage Among Child Support*

study in the late 1990s, the most recent study of its kind, determined that half of noncustodial parents who were not currently covering their children did not have access to employer-sponsored family coverage at all, before even considering cost.⁵⁹ Since 1999, the average cost of private family coverage has nearly tripled.⁶⁰

An analysis of selected States finds that issuing a National Medical Support Notice to the noncustodial parent's employer results in the child being enrolled in a health plan only 10 to 23 percent of the time. Therefore, although States have worked hard and committed substantial resources toward increasing the percentage of child support orders that include medical support from 60 percent to 80 percent since 2002, medical support is actually provided as ordered in only 30 percent of cases.⁶¹ While employer-sponsored and other private insurance is important for children who have access to it, most uninsured children in custodial families (79 percent) are eligible for Medicaid or CHIP. Therefore, to make sure that children get the coverage they need, the child support system needs to be in a position to take advantage of the full range of coverage options.

OCSE proposes to amend § 303.31 to provide a State with flexibility to permit parents to meet their medical support obligations by providing health care coverage or payments for medical expenses that are reasonable in cost and best meet the health care needs of the child. Section 303.31 is amended by removing restrictions that exclude the consideration of Medicaid, CHIP, and other State health programs as part of medical support and by providing greater flexibility to a State in defining the reasonable cost of health insurance. In accordance with section 452(f) of the Act, the proposed changes provide a State with options to define medical support to include private health insurance, other health care coverage

⁵⁹ Eligible Children (2002), available at <http://aspe.hhs.gov/hsp/CSE-health-ben02/index.htm>.

⁶⁰ For further information, see Laura Wheaton's report, *Nonresident Fathers: To What Extent Do They Have Access to Private Health Insurance?* (2000), available at <http://fatherhood.hhs.gov/ncp-health00/index.htm>.

⁶¹ In 1999, the average premium for family coverage was \$5,791 per year. In 2013, the average premium for family coverage was \$16,351 per year. For further information, see *Kaiser/HRET Survey of Employer-Sponsored Health Benefits, 2013, Exhibit 1.11*, available at: <http://kff.org/report-section/ehbs-2013-section-1/>.

⁶² Center for Policy Research, *Medical Child Support: Strategies Implemented by States*, Prepared under Office of Child Support Enforcement Grant #08-C0067 to Texas Office of the Assistant Attorney Division of Child Support (2009).

options such as Medicaid, CHIP, or other coverage plans available in the State, and cash medical support.

In § 303.31(a)(2) we propose to clarify that health insurance includes public and private insurance. This is a clarification, as "health insurance" already includes both public and private coverage.

In § 303.31(a)(3) we propose to omit the requirement that the cost of health insurance be measured based on the marginal cost of adding the child to the policy. In situations in which a parent may be required to purchase a family health insurance policy, it may be appropriate to consider the full cost the parent must pay for the coverage when determining if the coverage is reasonable in cost. Therefore, this proposed change gives a State additional flexibility to define reasonable medical support obligations.

Next, § 303.31(b) requires the State IV-D agency to petition the court for private health insurance that is reasonable in cost. OCSE proposes to remove the limitation in paragraphs (b)(1), (2), (3)(i), and (4) restricting this to private health insurance to allow a State to take advantage of both private and public health insurance options to meet children's health care needs, and emphasize the role of state child support guidelines in setting child support orders that address how parents will share the costs associated with covering their child. OCSE particularly requests comments regarding the IV-D program's role in carrying out its medical support statutory responsibilities, including the roles of cost allocation between parents and enrolling children in coverage.

Section 303.72: Requests for Collection of Past-Due Support by Federal Tax Refund Offset

The Federal Tax Refund Offset Program was enacted into law to collect past-due child support payments from the Federal tax refunds of parents who have been ordered to pay child support. A State is required to submit all cases that meet the criteria for the Federal Tax Refund Offset to OCSE for collection. In addition, under current OCSE regulations, a State must notify any other State that is enforcing the same case when that case is submitted for offset and when the initiating State receives an offset. However, according to the current Department of Treasury regulations, an initiating State is only required to notify other States if it receives an offset.⁶²

⁶² See 31 CFR 285.3(c)(6).

In order to make the regulatory requirements for the Federal Tax Refund Offset more streamlined and more efficient, OCSE proposes to modify its notice requirements to make them consistent with those of the Department of Treasury. The proposed modification will eliminate a mandate that inundates States with unnecessary case file information and ultimately will make program management procedures in this area more efficient.

States are required to submit all cases that meet specific criteria for Federal Income Tax Refund Offset for collection through the Federal Tax Refund Offset program. The Federal Tax Refund Offset program is a collaborative effort between OCSE, the Department of the Treasury, and State IV-D agencies.

Current OCSE regulations at § 303.72(d)(1) require a State, in interstate situations, to notify any other State involved in enforcing the support order when it submits the case for offset and when the State receives the offset amount. However, the United States Treasury regulations at 31 CFR 285.3(c)(6) only require a State to notify any other State involved in enforcing the child support order when it receives the offset payment. In order to align these regulations with those of the United States Treasury, OCSE proposes to amend § 303.72(d)(1) by eliminating the phrase, "when it submits an interstate case for offset."

State IV-D agencies have shared that when a State certifies and submits an interstate case for tax refund offset, the information is not particularly helpful to any other State involved in enforcing the support order. If a responding State needs to know that a case has been submitted for tax refund offset, this information is usually available through the Federal Collections application or the QUICK application⁶³ accessed through the State Services Portal.⁶⁴ For those States that have programmed for the transaction, this information may also be received through the Child Support Enforcement Network (CSENet)⁶⁵ transaction that was developed to serve this purpose. OCSE believes that by discontinuing the

⁶³ QUICK stands for Query Interstate Cases for Kids. It is a secure web application that allows child support workers to view financial, case status, and case activities information in another State's child support case in real time.

⁶⁴ State Services Portal is an OCSE Internet-based infrastructure that supports State worker access to child support services via a secure, single sign-on interface. A State worker can access multiple applications through this system.

⁶⁵ Child Support Enforcement Network or CSENet, provides a standardized format for State Child Support systems to generate and process automated interstate child support information.

requirement for a State to notify other States involved in enforcing a support order when it submits an interstate case for tax refund offset, a State will not inundate other States with unnecessary information and will ultimately save both time and resources.

Section 303.100: Procedures for Income Withholding

Recognizing that over two-thirds of child support payments are collected by employers through income withholding, we propose to standardize and streamline income withholding rules. These proposals will increase child support collections and ensure that employers are not unduly burdened by this highly effective enforcement tool. We propose making changes in § 303.100 to address two of the problems employers have encountered in efficiently executing their responsibilities for income withholding: The inconsistent use of the OMB-approved Income Withholding for Support form and the transmission of payments on non-IV-D orders to the appropriate SDU.

Child support payment processing has changed dramatically in the past 30 years. In the 1970s, child support payments were paid by noncustodial parents, primarily in cash or by check, directly to courts or local child support agencies. In the 1980s and early 1990s, Congress passed a series of laws that expanded and strengthened employer income withholding as an enforcement tool. The Child Support Enforcement Amendments of 1984 (Pub. L. 98-378), for example, added required procedures for mandatory income withholding, and the Family Support Act of 1988 (Pub. L. 100-485) required automatic income withholding for most child support orders. As States and employers implemented the income withholding provisions, they encountered barriers to payment processing. A 1992 General Accounting Office (now the Government Accountability Office) (GAO) report, *Interstate Child Support: Wage Withholding Not Fulfilling Expectations*, highlighted pervasive problems with the system in place. According to the GAO report, the lack of uniform withholding procedures across States and counties, the failure of timely service of withholding orders, and the tendency of States to involve the courts or require additional procedures in the process hampered effectiveness. These problems were compounded in interstate cases.⁶⁶

⁶⁶ Government Accountability Office, *Wage Withholding Not Fulfilling Expectations*, HRD-92-65BR (1992), available at: <http://www.gao.gov/products/HRD-92-65BR>.

Similarly, a 1991 Office of Inspector General report on the employer experience with income withholding found that employers were encountering difficulties implementing income withholding in an environment where State standards and procedures were confusing and varied from State to State.⁶⁷

In response to employer requests to minimize employer burden, PRWORA included new provisions to strengthen income withholding, including standardizing procedures.⁶⁸ Specifically, section 466(b)(6)(A)(ii) of the Act requires that the notice given to the employer for income withholding in all IV-D cases shall be “in a standard format prescribed by the Secretary, and contain only such information as may be necessary for the employer to comply with the withholding order.” Section 466(a)(8)(B)(iii) of the Act requires that section 466(b)(6)(A)(ii) of the Act be applicable also to non-IV-D income withholding orders. In addition, section 454A(g)(1)(A)(ii) of the Act requires that a State transmit orders and notices for income withholding to employers (and other income withholding) using uniform formats prescribed by the Secretary. As noted by the GAO in its 2002 report, these provisions clearly require all individuals and entities to use the form developed by the Secretary of HHS to notify employers of the income withholding order for child support in all IV-D and non-IV-D cases.⁶⁹

In response to the PRWORA directive to prescribe a standard format for income withholding, the Secretary of HHS developed the OMB-approved Income Withholding for Support (IWO) form (also referred to as the OMB-approved form). The interim final rule, 45 CFR 303.100(e)(1), issued on February 9, 1999, implemented section 466(b)(6)(A)(ii) of the Act requiring the use of the OMB-approved form (OMB 0970-0154). The preamble to the rule states as follows:

Paragraph (f) [of 45 CFR 303.100] is redesignated as paragraph (e). We are

⁶⁷ U.S. Department of Health and Human Services, Office of Inspector General, *An Employer Perspective: Fragmentation of State Practices Impair Ability of Employers to Effectively Implement Wage Withholding Process* (1991).

⁶⁸ For further information, see the Committee on Ways and Means, U.S. House of Representatives, *Summary of Welfare Reforms Made by Public Law 104-193*, Nov. 6, 1996, available at: <http://www.access.gpo.gov/congress/wm015.txt>, Section 314.

⁶⁹ The GAO report, *Child Support Enforcement: Clear Guidance Would Help Ensure Proper Access to Information and Use of Wage Withholding by Private Firms*, GAO-02-349 (2002), available at: <http://www.gao.gov/new.items/d02349.pdf>.

revising new paragraph (e)(1) by adding “using the standard Federal format” after the word “notice”. We are making this revision to conform to section 466(b)(6)(A)(iii) of the Act (sic), which requires the States to issue income withholding notices in a standard format prescribed by the Secretary. On January 27, 1998, the Office of Child Support Enforcement distributed this standard income withholding form to the States in OCSE-AT-98-03 (OMB No. 0970-0154).⁷⁰

The OMB-approved form, though used consistently by State IV-D agencies, is not used universally in non-IV-D cases by other entities, which is contrary to the requirement in section 466(b)(6)(A) of the Act. OCSE issued policy in 1999, 2001, and 2003 to clarify the requirements for issuing and complying with the OMB-approved form and complying with the child support order in OCSE PIQ-99-02, “Order/Notice to Withhold Income for Child Support,”⁷¹ OCSE PIQ-01-01, “Clarification on Use of the Federal Order/Notice to Withhold Income for Child Support,”⁷² and OCSE PIQ-03-03, “Requirements for Issuing and Complying with the Federal Income Withholding Form.”⁷³ These policies made it clear that the OMB-approved form must be used in all income withholding cases. Despite this guidance, employers continue to raise concerns to OCSE that they routinely receive court documents and divorce decrees with income withholding instructions that are frequently difficult to understand and are not accompanied by the OMB-approved form.

Upon receipt of the OMB-approved form, the employer must determine if the form is regular on its face, meaning the employer determines that the sender has correctly followed the instructions on the form. Failure of individuals, private attorneys, and even some courts and States to use the OMB-approved form results in confusion, delays, and costly data processing for employers. To address this problem, we propose clarifications in two places in the regulations. Currently, § 303.100(e) requires a State to use “the standard Federal format” when sending notice to employers to initiate income withholding on IV-D cases. In order to be as clear as possible, we propose

⁷⁰ 64 Fed. Reg. 6237, 6244 (Feb. 9, 1999) (original quote incorrectly refers to section 466(b)(6)(A)(iii), however, reference is to requirements of section 466(b)(6)(A)(ii); see also AT-99-01, February 10, 1999, available at: <http://www.acf.hhs.gov/programs/cse/pol/AT/1999-at-9901.htm>.

⁷¹ Available at: <http://www.acf.hhs.gov/programs/cse/pol/PIQ/1999/piq-9902.htm>.

⁷² Available at: <http://www.acf.hhs.gov/programs/cse/pol/PIQ/2001/piq-01-01.htm>.

⁷³ Available at: <http://www.acf.hhs.gov/programs/cse/pol/PIQ/2003/piq-03-03.htm>.

changing this phrase to “the required OMB-approved Income Withholding for Support form.”

We also propose requiring the use of the OMB-approved form in a new provision. In order to ensure that employers receive this standard form when processing income withholding, regardless of the type of entity sending the income withholding request and regardless of whether the case is IV-D or non-IV-D, we propose adding a new paragraph (h) under § 303.100 titled “Notice to employers in all child support orders,” which imposes this requirement.

While the language in the OMB-approved Income Withholding for Support form must appear verbatim when transmitted to an employer, OCSE recognizes and accepts that the variety of form-generation tools used may result in minor formatting variations to the OMB-approved form (e.g., inability to generate check boxes, different fonts, shading, and spacing). Variations to the form that are not acceptable, however, include addition or deletion of data or altering the general location of information on the OMB-approved form. State laws may require States to provide employers and obligees with certain state-specific income withholding provisions. In these situations, States may include this information on the OMB-approved form in the section for Additional Information as directed in the instructions on the use of the form.

The second payment processing issue addressed in this section is the transmission of income withholding payments from employers to SDUs. Sections 454B and 466(b)(5) of the Act require employers to send income withholding payments to the appropriate SDU, regardless of whether the case is IV-D or non-IV-D. However, OCSE has received ongoing complaints from employers about income withholding orders that instruct the employer to send child support payments to individuals or entities other than the SDU. The most common examples, particularly in respect to non-IV-D cases, include instructions to send income withholding payments to custodial parents, courts, private collection agencies, or private attorneys.

Bypassing the SDU in the income withholding process creates a significant burden on employers because these income withholding payments must be processed manually. In addition, when payments are diverted from the SDU, noncustodial parents do not receive proper credit for the portion of income withheld to pay for child support, payments to families are delayed, and confusion related to

payment allocation is created, particularly in multiple-family scenarios.

Under current § 303.100(e)(1)(ii), employers are required to send all payments on IV-D cases to the SDU, however, income withholding payments on non-IV-D orders are not addressed in the rule. Therefore, we propose to state explicitly under new paragraph § 303.100(i), that income withholding payments on non-IV-D cases must be directed through the SDU.

Section 304.20: Availability and Rate of Federal Financial Participation

We recognize that existing child support regulations governing expenditures subject to Federal financial participation (FFP) are out of date and do not reflect a growing body of research that supports the effectiveness of a range of strategies that can help strengthen the ability and willingness of noncustodial parents to support their children. Accordingly, we propose to amend the regulations to increase the flexibility of State IV-D agencies to receive Federal reimbursement for cost-effective practices that increase the effectiveness of standard enforcement activities. As the program has evolved over the past decade, many State Child Support Enforcement programs have already implemented these strategies.

Additionally, there is some uncertainty among some States about what expenditures are eligible for Federal reimbursement. To update old regulations, respond to State requests to allow Federal reimbursement for a broader range of activities that can increase collections, and address the uncertainty about allowability of expenditures, the proposed rule clarifies that FFP is available for necessary and reasonable expenditures properly attributed to the Child Support Enforcement program for services and activities designed to carry out the title IV-D State plan, including obtaining child support, locating noncustodial parents, and establishing paternity.

Research supports a range of cost-effective strategies that can help move nonpaying cases into paying status and increase regular payments.⁷⁴ Over the

past decade, State, Tribal, and local Child Support Enforcement programs have updated their program policies, practices, and strategies to collect more child support payments for families by addressing some of the underlying reasons for nonpayment. For example, 21 States set child support obligations based on current earnings and modify the order when earnings change; 44 States compromise child support debt owed to the State; and 38 States have eliminated any legal standard that treats incarceration as “voluntary unemployment.” In addition, a number of States, such as Texas, Tennessee, and Oregon, recognizing the relationship between payment of child support and playing an active parenting role, address parenting time as part of their State child support guidelines.

As States have begun to incorporate programs and activities to supplement their law enforcement practices for enforcing child support, we recognize that existing child support regulations governing the availability of FFP for child support expenditures, §§ 304.20–304.23, are out of date. Federal financial participation represents the Federal match available to reimburse a portion of the State’s operational expenditures incurred under the State IV-D plan.

Currently, the regulations do not consistently recognize the range of cost-effective approaches to increasing collections that complement traditional and often costly law enforcement practices such as contempt hearings, criminal prosecution, and jail. While there continues to be a role for these traditional law enforcement practices, the NPRM increases State flexibility within existing statutory authority to implement and receive reimbursement for necessary and reasonable activities properly attributed to the Child Support Enforcement program that complement standard automated tools and improve program outcomes.

For the most part, the existing rules governing FFP were promulgated more than 30 years ago before modern program models were developed. These rules are formulated as a specific and limited list of “necessary” activities for which FFP is available. The existing rules do not clearly state that FFP also is available for activities to carry out the State plan that may not be on the list but are within the program’s statutory authority and are otherwise reasonable and properly attributed to the Child Support Enforcement program. For

⁷⁴ For further information, see Kye Lippold and Elaine Sorensen, *Strengthening Families Through Stronger Fathers: Final Impact Report for the Pilot Employment Programs* (2011), available at: <http://www.urban.org/UploadedPDF/412442-Strengthening-Families-Through-Stronger-Fathers.pdf>; Daniel Schroeder and Nicholas Doughty, *Texas Non-Custodial Parent Choices: Program Impact Analysis* (2009), available at: http://www.utexas.edu/research/cshr/pubs/pdf/NCP_Choices_Final_Sep_03_2009.pdf; and Center for Policy Research and Policy Studies, Inc., *Child*

Access and Visitation Programs: Participant Outcomes: Program Analysis (2007), available at: <http://www.acf.hhs.gov/programs/cse/pol/DCL/2007/dcl-07-15a.pdf>.

many years, States have regularly claimed and received reimbursement for such expenditures, but there continues to be some lingering uncertainty about whether FFP is available. Accordingly, we propose to amend the rules to make the standard clear that FFP is available for “necessary and reasonable expenditures properly attributed to the Child Support Enforcement program, including but not limited” to the activities listed in the rule.

We are specifically requesting comments regarding the allowability of FFP for using electronic monitoring systems for child support purposes. These electronic monitoring systems may enable the noncustodial parent, cited for contempt of court for non-payment of support, to work and pay child support as an alternative to incarceration. If the noncustodial parent is allowed to work, the family continues to receive needed income, and the accumulation of additional arrearages is avoided. We are interested in comments on how and under what circumstances child support programs would propose to use electronic monitoring devices for child support program purposes. Additionally, we are soliciting comments regarding the desirability to provide Federal reimbursement under the title IV-D program for the use of electronic monitoring systems in child support cases.

We propose to amend subparagraph (a)(1) of § 304.20 to clarify that FFP is available for expenditures for child support services and activities necessary and reasonable to carry out the title IV-D State plan. This change reflects the OMB *Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87)*, published at 2 CFR part 225.⁷⁵ Appendix A to 2 CFR part 225 indicates that a State must ensure the funds are used in compliance with all applicable Federal statutory and regulatory provisions, costs are reasonable and necessary for operating these programs, and funds are not used for general expenses required to carry out other responsibilities of the State and its subrecipients. Additionally, the Appendix indicates that for costs to be allowable, they must be necessary and reasonable for proper and efficient performance and administration of Federal awards. It further defines that a cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at

the time the decision was made to incur the cost.

We also propose revisions to paragraph (b) of this section to specify that FFP is available for necessary and reasonable expenditures which are properly attributed to the Child Support program, such as development and dissemination of educational materials about the child support program, child support educators or liaisons, child support case management, domestic violence safeguards, referrals to other programs, and other cost-effective activities to help carry out the State plan.

We propose changes to § 304.20(b)(1)(viii)–(ix) which address the establishment of agreements with other agencies administering the titles IV-D, IV-E, XIX, and XXI programs, to recognize activities related to cross-program coordination, client referrals, and data sharing when authorized by law. The proposed provisions include minor technical changes and specify the criteria necessary for these agreements. Proposed § 304.20(b)(1)(viii)(D) and (E) add to the list of criteria procedures to be used to coordinate services and agreements to exchange data as authorized by law. Proposed § 304.20(b)(1)(ix) specifies that FFP is also available for the establishment of agreements with the CHIP program, along with the Medicaid program. Proposed revisions to

§ 304.20(b)(1)(ix)(B) clarify that a criterion for the agreement is the procedures to be used to coordinate services. Proposed revisions to § 304.20(b)(1)(ix)(C) specify that the criteria for agreements with Medicaid and CHIP agencies include provisions related to the exchange of data as authorized by law.

For reasons cited above, we propose to amend § 304.20(b)(2) by clarifying that FFP is available for services and activities for the establishment of paternity, including but not limited to the specific activities listed in § 304.20(b)(2). We propose to add educational and outreach activities to § 304.20(b)(2)(vii) to clarify that FFP is available for IV-D agencies to educate the public and to develop and disseminate information on voluntary paternity establishment. We also propose to amend § 304.20(b)(3) by clarifying that FFP is available for services and activities for the establishment and enforcement of support obligations includes but is not limited to the specific activities listed in § 304.20(b)(3).

We are proposing to redesignate existing § 304.20(b)(3)(v) as § 304.20(b)(3)(viii). We have added a

paragraph (b)(3)(v) to allow FFP for bus fare or other minor transportation expenses to allow participation by parents in child support proceedings and related activities such as genetic testing appointments.

In addition, we have specifically included new rule provisions under paragraph (b)(3)(vi) to authorize FFP for activities designed both to increase parents’ *pro se* access to child support proceedings and to encourage States to develop nonadversarial dispute resolution alternatives to a standard adjudicative hearing. The outcome of a child support proceeding has a substantial impact on parents’ financial circumstances and, in some States that conduct civil contempt proceedings, can result in jail time and loss of liberty for noncustodial parents. It is highly important to encourage informed participation by both parents in those proceedings. Most custodial and noncustodial parents in the IV-D caseload are not represented by private attorneys and are attempting to navigate legal proceedings on a *pro se* basis. At the same time, many States have sought to reduce the adversarial nature of child support proceedings in order to positively engage both parents, reduce conflict between the parents which can be harmful to their children, and increase compliance with support orders and customer satisfaction. In addition, resolving cases outside the court system can help reduce delays, and save money and court time. Thus, we have added paragraph (b)(3)(vi) to recognize that FFP is available to increase *pro se* access to adjudicative and alternative dispute resolution processes in IV-D cases.

We also propose to add paragraph (b)(3)(vii) to allow FFP for *de minimis* costs associated with the inclusion of parenting time provisions entered as part of a child support order and incidental to a child support enforcement proceeding. Under State laws, child support and child access rights are legally separate and independent rights and responsibilities. While Congress has authorized the IV-D program to establish child support, and not to resolve child access disputes, we have concluded that the mere inclusion of a parenting time provision in a IV-D order when all parties are present at the proceeding and willingly agree to the provision should be allowed when the activity is incidental to the child support proceeding and the added cost is *de minimis* or nonexistent.

In light of the research showing appreciable gains in child support payments when job services are made available to unemployed noncustodial

⁷⁵ Available at: http://ecfr.gpoaccess.gov/cgi/t/text{text-idx?c=ecfr&tpl=/ecfrbrowse/Title02/2cfr225_main_02.tpl}.

parents, we propose to add paragraph (b)(3)(ix) to allow FFP for certain job services for noncustodial parents owing child support through the IV-D program that are reasonably expected to increase child support payments. Many State and local child support programs have developed partnerships to provide employment services for parents using a variety of funding streams, such as incentive payments, grants, TANF and Workforce Investment Act (WIA) funding, and private funding. However, State child support agencies have expressed concern that existing funding sources are inadequate to maintain a sufficient level of services on an ongoing basis and at scale. The paucity of sustainable resources available for noncustodial parent employment programs have limited child support agencies and courts trying to collect support from unemployed parents, leaving them with few effective options for securing child support for the children who need it.

OCSE anticipates that most State child support agencies will purchase job services by entering into contracts with private and community-based employment, fatherhood, and prisoner re-entry programs, community action agencies, community colleges, or other service providers to deliver allowable job services, rather than offer the services in-house. However, this does not preclude a child support agency from providing job services to noncustodial parents directly. In addition, OCSE encourages child support agencies to develop and maintain partnerships with TANF, SNAP, workforce agencies, including Workforce Investment Boards, and American Job Centers to offer available job services to noncustodial parents whenever those resources are available. We also encourage State child support agencies to use all available resources with other organizations that can offer additional employment and training activities beyond those allowed under our rule.

We propose to delete “and” at the end of § 304.20(b)(9) and to add “and” at the end of § 304.20(b)(11). Finally, we propose a new paragraph (b)(12) to allow FFP for the educational and outreach activities intended to inform the public, parents and family members, and young people who are not yet parents about the Child Support Enforcement program, responsible parenting and co-parenting, family budgeting, and other financial consequences of raising children when the parents are not married to each other. We believe that these educational and outreach activities are cost-effective

strategies to teach the public about the financial and emotional consequences of parenting and provide information about child support services that may be properly attributed to the child support program.

Section 304.23: Expenditures for Which Federal Financial Participation Is Not Available

For paragraph (d), we are proposing to add “State and county employees and court personnel” as a technical clarification that Federal financial participation is not available for the education and training of personnel, but this provision does not apply to other types of education and training activities (such as those provided to parents, which are addressed in other rules). We will continue to pay FFP for the short-term training provided to IV-D staff, as well as reasonable and essential short-term training related to hospital-based voluntary paternity acknowledgment programs pursuant to § 304.20(b)(2)(viii) and reasonable and essential short-term training of court and law enforcement staff assigned on a full or part time basis to support enforcement functions under the cooperative agreement pursuant to § 304.21(a)(2).

AT-81-18, “Definition of Short Term Training,” dated September 11, 1981, defines “short-term training” to be any training that would directly improve an individual’s ability to perform his or her current job or another IV-D-related job.⁷⁶ However, short-term training is not related to providing a general education for an individual or training that is taken for the sole purpose of earning credit hours toward a degree or certificate. FFP is available under the above definition of short-term training regardless of the source of the training.

Section 307.11: Functional Requirements for Computerized Support Enforcement Systems in Operation by October 1, 2000

As discussed previously in the NPRM under the Case Closure section, Section 459(h) of the Act provides that only benefits that are based upon employment remuneration are subject to child support garnishment. Supplemental Security Income (SSI) is a means-tested program that is not based upon remuneration from employment. Federal policy on child support garnishments recognizes these exceptions by clearly directing child support agencies not to collect against SSI benefits (either directly or from

bank accounts). Currently OCSE estimates that about three percent of noncustodial IV-D parents are currently receiving SSI.

Most State IV-D agencies, including California, Florida, Ohio, and Pennsylvania, have front-end procedures in place to prevent garnishment of exempt benefits, and all State IV-D agencies have back-end procedures in place to correct improper garnishments. To our knowledge, improper State garnishment is very rare. However, the harm to the beneficiaries can be severe. We think it is important to have procedures in place to ensure that these noncustodial beneficiaries do not have their SSI or other needs-based benefits garnished, and if these benefits are incorrectly garnished, to ensure that the funds are quickly refunded. In this NPRM, we are proposing to strengthen our policies and incorporate provisions to provide additional safeguards so low-income noncustodial parents’ financial accounts are not garnished when they are only receiving these exempt benefits, which retain their character as exempt even after being deposited.

We propose a minor editing revision to paragraph (c)(3) and add a new provision under subparagraph (c)(3)(i) to require a IV-D agency to develop automated procedures in its statewide computerized support enforcement system to identify cases which have been previously identified as involving a noncustodial parent who is a recipient of SSI to prevent automatic garnishment of the noncustodial parent’s financial account. We propose to extend similar protection to recipients of concurrent SSI and benefits under title II as we believe these noncustodial parents are in similar financial straits. The State must review these noncustodial parents’ financial accounts to determine whether there are available assets above subsistence level available to garnish, other than SSI or concurrent SSI and benefits under title II of the Act. We believe that these new procedures will provide safeguards for the beneficiary to ensure that his or her SSI or concurrent SSI and benefits under title II of the Act are not inappropriately garnished.

We are also adding a new subparagraph (c)(3)(ii) to require a IV-D agency to have automated procedures in place to return funds to a noncustodial parent within 2 days after the agency determines that SSI or concurrent SSI and benefits under title II of the Act in the account have been incorrectly garnished. We believe that if SSI or concurrent SSI and benefits under title II of the Act have been garnished from a noncustodial parent’s financial account, the IV-D agency

⁷⁶ Available at: <http://www.acf.hhs.gov/programs/cse/pol/AT/1981/at-8118.htm>.

needs to have procedures to refund the monies quickly so that it does not cause undue economic hardship. We recognize there may be situations in which the noncustodial parent's SSI or concurrent SSI and benefits under title II of the Act are garnished because the IV-D agency was not aware the recipient was receiving these benefits until after the beneficiary's bank account is garnished. However, if this occurs, we believe that it is imperative that the refund is sent to the noncustodial parent within 2 days. We specifically seek comments on whether this time frame is reasonable, and ways that OCSE might be able to assist State IV-D agencies in meeting these requirements.

SSI accounts managed by representative payees (individuals or organization appointed by SSA to receive benefits for someone who cannot manage or direct someone else to manage his or her benefits) are clearly identified by the financial institution as representative payee accounts, with the beneficiary having sole ownership of the funds in the account. The representative payee is identified as a financial agent on the account, and does not have an ownership interest in the account. Therefore the SSI beneficiaries with representative payees would be covered by the same protections and safeguards against bank account garnishment as an account held directly by the beneficiary.

Request for Comments on Undistributed and Abandoned Collections

A paramount policy goal for child support agencies is to distribute the child support collection to the family, and failing diligent efforts to do so, to return the payment to the noncustodial parent. Therefore, it is important for OCSE to ensure that State child support agencies are making concerted efforts to proactively locate the custodial parent or noncustodial parent, as well as making efforts to ensure that all collections are distributed. Therefore, in this NPRM, we ask State child support agencies to provide specific comments, including information about their policies and procedures related to both undistributable and abandoned child support collections and the efforts that States take both through the State child support agency and the State treasury office to maximize the probability that families receive the collections, or if that result cannot be achieved, that the payment is returned to the noncustodial parent.

Topic 2: Updates To Account for Advances in Technology §§ 301.1, 301.13, 302.33, 302.34, 302.50, 302.65, 302.70, 302.85, 303.2, 303.5, 303.11, 303.31, 304.21, 304.40, 305.64, 305.66, and 307.5

As discussed earlier in the preamble, the second set of revisions proposed in this regulation encompasses updates to remove barriers to electronic communication and document management. Throughout the regulation, where appropriate, we propose removing the words "written" and "in writing" and inserting "record" or "in a record." These simple changes will allow OCSE, States, and others the flexibility to use cost-saving and efficient technologies, such as email or electronic document storage, wherever possible. The proposed revisions to the regulation do not require a State to use electronic records for the specified purpose, but instead provide a State with the option to use electronic records, in accordance with State laws and procedures.

The definition of "record" we propose in this regulation is taken from UIFSA 2001, section 102(15). The UIFSA drafters adopted the definition from another uniform law, the Uniform Electronic Transactions Act (1999). "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form." The Uniform Electronic Transactions Act describes this definition further:

This is a standard definition designed to embrace all means of communicating or storing information except human memory. It includes any method for storing or communicating information, including "writings." A record need not be indestructible or permanent, but the term does not include oral or other communications which are not stored or preserved by some means. Information that has not been retained other than through human memory does not qualify as a record. As in the case of the terms "writing" or "written," the term "record" does not establish the purposes, permitted uses or legal effect which a record may have under any particular provision of substantive law. ABA Report on Use of the Term "Record," October 1, 1996.⁷⁷

Substituting the phrase "in a record" for "in writing" allows more flexibility for electronic options by preventing a record from being automatically denied legal effect or enforceability just because it is in an electronic format. In addition,

the use of the word "record" is designed to be technologically neutral; the word equates an electronic signature with a hand signature and an electronic document (whether scanned or created electronically) with a paper document. It neither means that electronic documents or electronic signatures will be required, nor will it affect any Federal requirements for what documents must contain to be valid or enforceable, such as a signature.

We are aware that not everyone has access to the latest technology. For that reason, wherever individual members of the public are involved, we generally have not proposed removing requirements that the information is provided in a written format. However, we invite comments on this approach and whether individual members of the public should be provided the option to request information "in writing" or "in a record", such as emails, text messaging, voice mails. In addition, we have not changed regulatory language where written formats are required by statute. We request comments on this approach as well, in general or referencing specific provisions.

Finally, we acknowledge that some of the proposed revisions to insert the term "record" may seem awkward. We propose using the term "record" because it maximizes flexibility and reflects terminology currently accepted within the child support community; however, we invite comments on this approach generally and request specific suggestions for alternatives. An example of an alternative approach might be for OCSE to define the terms "written" or "in writing" in the regulations to include electronic formats. OCSE could then leave the existing regulatory language as is. This alternative approach would provide States the option to use electronic formats as may be permitted or limited by State law procedures and requirements.

Part 301 (§§ 301.1 and 301.13): State Plan Approval and Grant Procedures

We propose to make changes to two sections in part 301, "State Plan Approval and Grant Procedures." First, in § 301.1, we propose amending the definition of "Procedures" by changing the phrase "written instructions" to "instructions in a record." This will allow instructions set forth under the State's child support plan to be made in a perceivable form that is not limited to a written format.

In addition, we propose inserting the definition for the term "record" (as discussed above). The use of the term "record" is broader than the term "written" and encompasses different

⁷⁷ See comments to the Uniform Electronic Transactions Act (1999), section 2, Definitions, available at: <http://www.law.upenn.edu/bll/archives/ulc/uecicta/eta1299.htm>.

ways of storing information, including, for example, in a written or an electronic document.

The first sentence of the introductory paragraph of § 301.13, “Approval of State plans and amendments,” describes the State plan as consisting of written documents furnished by the State to cover its Child Support Enforcement program under title IV-D of the Act. We propose replacing the words “written documents” with the word “records.” The intent of this change is to allow for electronic submission, transmission, and storage of the State child support plan. When a State submits State child support plans electronically, it must ensure electronic signatures accompany the documents.

Paragraphs (e) and (f), “Prompt approval of the State plan” and “Prompt approval of plan amendments,” respectively, discuss the deadline by which OCSE must make a determination on a State plan or State plan amendments submitted by the State, and allow for the OCSE regional program office and the State to agree to an extension on the deadline in “a written agreement.” We propose changing the words “a written agreement” in both provisions to “an agreement, which is reflected in a record.” These changes will enable OCSE regional program offices to secure from IV-D agencies agreements to extend an approval deadline for either a State plan or State plan amendments in an electronic record format. In addition, we propose a technical change to paragraph (f) to change “Regional Commissioner” to “Regional Office” for consistency with § 301.13.

Part 302 (§§ 302.33, 302.34, 302.50, 302.65, 302.70, and 302.85): State Plan Requirements

We propose to make changes to several sections in part 302, “State Plan Requirements.” First, § 302.33(d)(2), which discusses the recovery of State costs of providing services in nonassistance cases, requires a State to develop a written methodology to determine standardized costs which are as close to actual costs as is possible. We propose changing the phrase “written methodology” to “methodology, which is reflected in a record.” This proposed change will afford a State record-keeping flexibility in developing a methodology for recovering standardized costs.

Currently, the first sentence under § 302.34 requires a State to enter into written agreements for cooperative arrangements under § 303.107 with appropriate courts, law enforcement officials, Indian tribes, or tribal

organizations. We propose editing the phrase “written agreements” to read “agreements, which are reflected in a record.” This will ensure that any cooperative arrangements entered into by the IV-D agency can be agreed upon in a record and will not be limited to a written format. This amendment does not change any of the requirements for the document to be legally effective or enforceable, such as a signature.

Next, § 302.50 describes State requirements for the assignment of rights to support. Paragraph (b)(2) of that section requires a State to determine “in writing” the amount of an obligation, if there is no court or administrative order. We propose replacing the word “writing” with “a record” so that the State has greater flexibility in the format of this amount determination, according to its own State laws and guidelines procedures.

We also propose changes in § 302.65, “Withholding of unemployment compensation.” Paragraph (b) requires a State IV-D agency to enter into a written agreement with the SESA [State employment security agency] in its State for the purpose of withholding unemployment compensation from individuals with unmet support obligations.⁷⁸ We propose amending the sentence by changing the phrase “a written agreement” to “an agreement, which is reflected in a record” and as previously explained in footnote 76, replace SESA with SWA. Additionally, § 302.65(c)(3) requires State IV-D agencies to establish and use written criteria for selecting cases to pursue via the withholding of unemployment compensation for support purposes. We propose changing the words “written criteria” to “criteria, which are reflected in a record.” These changes will establish that the agreements States develop with SEAs and the criteria for selecting cases in which to pursue withholding unemployment compensation are not limited to written agreements or written criteria. Again, these amendments do not impact any of the requirements for the documents to be legally effective or enforceable, such as a signature.

In § 302.70, “Required State laws,” paragraph (a)(5) describes the procedures for paternity establishment. Paragraph (a)(5)(v) discusses requirements for objecting to genetic testing results and states that if no objection is made, a written report of the test results is admissible as evidence of

paternity without the need for foundation testimony or other proof of authenticity or accuracy. We propose changing the phrase “a written report of the test results” to “a report of the test results, which is reflected in a record.” We believe this change will provide greater flexibility and efficiency in admitting evidence of paternity. Please note that in this same provision, we have not proposed to eliminate the phrase “in writing” in the requirement that any objection to genetic testing results must be made in writing within a specified number of days before any hearing at which such results may be introduced into evidence. In this instance, the phrase “in writing” is statutorily prescribed, according to section 466(a)(5)(F)(ii) of the Act.

The final proposed change under State Plan Requirements is in § 302.85 on the “Mandatory computerized support enforcement system.” In the section describing the basis for OCSE to grant State waivers in regard to the mandatory computerized system, one of the requirements, described under § 302.85(b)(2)(ii), mandates the State to provide written assurances that steps will be taken to otherwise improve the State’s Child Support Enforcement program. We propose amending § 302.85(b)(2)(ii) by changing the phrase “written assurances” to “assurances, which are reflected in a record.” This change will provide a State the option of communicating with OCSE electronically when providing the required assurances under this provision.

Part 303 (§§ 303.2, 303.5, 303.11, and 303.31): Standards for Program Operations

We are proposing to make amendments to several provisions in part 303, “Standards for Program Operations.” In § 303.2, “Establishment of cases and maintenance of case records,” the regulation requires, under § 303.2(a)(2), that the State IV-D agency send an application to an individual within no more than five working days of a written or telephone request. We propose replacing the phrase “a written or telephone request” with “a request made by telephone or in a record,” in order to allow for any requests for applications that are received by telephone or transmitted electronically, for example, by email or text.

In this same section, we also propose changes to the requirements for applications for IV-D services, under § 303.2(a)(3). Currently, this section defines an application as a written document provided by the State which . . . is signed by the individual

⁷⁸ Please note, as discussed under Topic 3, Technical Corrections, we also propose replacing the State employment security agency (SESA) with State workforce agency (SWA) in this section and §§ 303.3 and 308.2.

applying for IV-D services. We propose lifting the restriction that applications only be in a written or paper format by replacing the phrase “written document” with “record.” We also propose amending the regulatory language to allow for electronic signature by inserting the phrase “electronically or otherwise” after the word “signature.” The proposed sentence would state that an application is a record that is provided or used by the State which indicates that the individual is applying for child support enforcement services under the State’s title IV-D program and is signed, electronically or otherwise, by the individual applying for IV-D services.

These proposed changes are in accordance with PIQ 09-02, which allows States to use electronic signatures on applications, as long as it is allowable under State law.⁷⁹ As noted in PIQ 09-02, the appropriateness of the use of electronic signatures must be carefully determined by States. In making this determination, States should consider the reliability of electronic signature technology and the risk of fraud and abuse, among other factors.

Section 303.5 describes program standards for paternity establishment. Subparagraph (g)(6) of that section requires the State to provide training, guidance, and “written instructions” regarding voluntary acknowledgment of paternity to hospitals, birth record agencies, and other entities that participate in the State’s voluntary acknowledgment program. We propose changing the phrase “written instructions” to “instructions, which are reflected in a record.” This change will allow a State the flexibility to provide program instructions in electronic formats, in addition to, or in place of, written instructions.

Next, we propose a change to the requirements for the closure of IV-D cases, under proposed § 303.11(d). This provision describes the process by which a State must notify service recipients, or, in regard to intergovernmental IV-D cases, the process by which responding agencies must notify initiating agencies, of their intent to close a case. The provision requires this notification be “in writing.” In order to allow for greater efficiency and flexibility, we propose allowing electronic notification in the instance of intergovernmental IV-D case closure when the responding agency is communicating with the initiating agency. However, we do not propose

changing the “written” notification requirement from a State to the recipient of services, because of our general approach not to remove written requirements where members of the public are involved, as described earlier. However, we invite comments on this approach and whether a recipient of services should be provided the option to request the case closure notice “in writing” or “in a record”, such as emails, text messaging, voice mails.

Next, we propose amending the introductory language in § 303.31(b)(3) by changing the phrase “written criteria” to “criteria, which are reflected in a record,” so that criteria established to identify cases where there is a high potential for obtaining medical support can be either in an electronic or written format.

Part 304 (§§ 304.21 and 304.40): Federal Financial Participation

We propose two changes to part 304, “Federal Financial Participation (FFP).” Under § 304.21, “Federal financial participation in the costs of cooperative arrangements with courts and law enforcement officials,” the regulations describe activities, under § 304.21(a), that are eligible for FFP reimbursement, provided they are “performed under written agreement.” We propose amending this section by changing the words “written agreement” to “agreement, which is reflected in a record,” to provide flexibility in the format of the agreements between a State and courts or law enforcement officials.

In addition, § 304.40, “Repayment of Federal funds by installments,” describes the procedures the State must follow in order to repay unallowable FFP funds to the Federal Government in installments. Section 304.40(a)(2) requires a State to notify the OCSE Regional Office in writing of its intent to make installment repayments. We propose changing the phrase “in writing” to “in a record.” This change will give a State the option of notifying the Regional Office electronically of its intent to repay Federal funds in installments.

Part 305 (§§ 305.64 and 305.66): Program Performance Measures, Standards, Financial Incentives, and Penalties

Under part 305, “Program Performance Measures, Standards, Financial Incentives, and Penalties,” we propose changes to §§ 305.64 and 305.66. First, in § 305.64, “Audit procedures and State comments,” a State may submit “written comments” in response to the interim audit report

within a specified timeframe under § 305.64(c). We propose changing “written comments” to “comments, which are reflected in a record,” allowing IV-D agencies to submit comments on an interim audit report in a perceivable format other than in a written format, if appropriate. In this same provision, § 305.64(c), we also propose a change to omit the phrase “by certified mail” from the second sentence of this paragraph since OCSE currently sends these reports electronically and by overnight mail.

An additional proposed change affects § 305.66, “Notice, corrective action year, and imposition of penalty.” Under § 305.66(a), if a State is found to be subject to a penalty, OCSE “will notify the State in writing of such finding.” We propose to replace “in writing” with “in a record” so that OCSE can notify the State that it is subject to a penalty in a perceivable or electronic format, not just in a written format.

Part 307 (§ 307.5): Computerized Support Enforcement Systems

In this section on proposed updates for advancements in technology, we propose one change to part 307, “Computerized Support Enforcement Systems.” In the section on mandatory systems, § 307.5, one of the three conditions for a waiver of any functional systems requirement or for a waiver of any conditions for APD approval is the State provides written assurance that steps will be taken to otherwise improve the State’s Child Support Enforcement program, § 307.5(c)(3). We propose amending this section by changing “written assurance” to “assurance, which is reflected in a record,” so that a State can provide assurance in a perceivable format other than a written format, if it so chooses.

Topic 3: Technical Corrections (§§ 301.15; 302.14; 302.15; 302.32; 302.34; 302.65; 302.70; 303.3; 303.7; 303.11; 304.10; 304.12; 304.20; 304.21; 304.23; 304.25; 304.26; 305.35; 305.63; 308.2; 309.85; 309.130; 309.145; and 309.160)

We propose a number of technical corrections that update, clarify, revise, or delete existing regulations to ensure that the child support enforcement regulations are accurate, aligned, and up-to-date.

Section 301.15: Grants

State agencies that administer the Child Support Enforcement Program under Title IV-D of the Act are required to provide information each fiscal quarter to OCSE concerning administrative expenditures and the

⁷⁹ Available at: <http://www.acf.hhs.gov/programs/cse/pol/PIQ/2009/piq-09-02.htm>.

receipt and disposition of child support payments from noncustodial parents. The enactment of PRWORA changed a number of the requirements affecting financial data needs. In September 1997, Form ACF-396 was introduced and approved by OMB for interim use for the reporting of expenditures, estimates, and projections while OCSE continued its review of the newly-enacted statutory changes. During that time, and as a result of the efforts of a Federal-State partnership representing all interested parties and individuals, new financial reporting forms were developed. These forms provide OCSE with the information needed to complete its various financial and reporting responsibilities with minimal collection and reporting burden on State agencies. The new reporting forms, the OCSE-396A and the OCSE-34A, replaced all previous form versions.

State IV-D agencies are required to report quarterly expenditures and collections using Forms OCSE-396A and OCSE-34A, respectively. The information collected on these reporting forms is used to compute State quarterly grant awards and annual incentive payments. These forms provide valuable information on State program finances.

Currently, § 301.15 does not reference the new forms and ultimately relies on outdated reporting requirements. In order to bring that section into alignment with current program operations, we propose to rename paragraph (a) *Financial reporting forms* and to delete subparagraph (3). We also propose to replace subparagraph (1) *Time and place* and subparagraph (2) *Description of forms* with definitions of Form OCSE-396A and Form OCSE-34A, respectively.

We also propose to rename paragraph (b) *Review as Submission, review, and approval* and to add under paragraph (b) the following: (1) *Manner of submission*; (2) *Schedule of submission*; and (3) *Review and approval*. Current § 301.15(a)(1) indicates that the expenditure report has to be submitted 30 days following the end of a fiscal quarter, but the estimate for a grant has to be submitted within 45 days prior to the period of the estimate. Additionally, the current reporting instructions for the expenditure and collections reports require States to submit the forms no later than 30 days following the end of each fiscal quarter. We are proposing, therefore, that the *Schedule of submission* section be modified so that the financial forms must be submitted no later than 45 days following the end of each fiscal quarter. This will be a change of policy for the expenditure and collections reports and will require

revision to the instructions for the reports, if the proposal is accepted. This proposed modification will afford a State more time to submit its financial reports. The other revisions in this paragraph reflect the current operating procedures and processes that are currently in place.

Additionally, we propose to revise paragraph (c) *Grant award* by deleting its existing language and replacing that language with three subparagraphs (1) *Award documents*; (2) *Award calculation*; and (3) *Access to funds*. Finally, we also propose to delete paragraph (d) *Letter of credit payment system* and replace it with a new provision describing administrative requirements, titled *General requirements*. These revisions are proposed to align the regulations with the current operating procedures.

Section 302.14: Fiscal Policies and Accountability

In 1988, the Department implemented the common rule at 45 CFR part 92. The common rule expanded the scope of 45 CFR part 92 to include nonentitlement grant programs, and to remove such programs from the scope of part 74 but did not include entitlement programs like Child Support Enforcement.

In 2003, the Department revised its grants management regulations in order to bring its entitlement programs, like Child Support Enforcement, under the same regulations that already applied to nonentitlement programs for grants and cooperative agreements to State, Tribal, and local governments. Thus, the reference to part 74 has been erroneous since DHHS transferred the administrative requirements for title IV-D grant programs from 45 CFR part 74 to 45 CFR part 92 in 2003.⁸⁰ Therefore, we propose to replace the reference to part 74 under § 302.14 with reference to part 92. For consistency, as discussed below, we will also replace all references to part 74 with part 92, as appropriate, in 9 other provisions throughout the child support regulations, §§ 302.15, 303.11, 304.10, 304.20, 304.25, 309.85, 309.130, 309.145, and 309.160.

⁸⁰ See 45 CFR parts 74 and 92: *Uniform Administrative Requirements for Awards and Subawards to Institutions of Higher Education, Hospitals, Other Nonprofit Organizations, and Commercial Organizations; and Certain Grants and Agreements with States, Local Governments and Indian Tribal Governments and Uniform Administrative Requirements for Grants and Cooperative agreements to State and Local Governments*, 68 FR 52843, September 8, 2003, available at: <http://edocket.access.gpo.gov/2003/pdf/03-22513.pdf>.

Section 302.15: Reports and Maintenance of Records

Section 302.15(a) references part 74. We propose to replace that reference with a reference to part 92.

Section 302.32: Collection and Disbursement of Support Payments by the IV-D Agency

Because the dates contained in the introductory paragraph are outdated, we propose to update by removing the introductory paragraph. We also propose to revise paragraph (b) to replace “State Disbursement Unit (SDU)” with “SDU.” In addition, we propose to replace an incorrect cross reference in paragraph (b)(1) from § 303.7(c)(7)(iv) to § 303.7(d)(6)(v).

Section 302.34: Cooperative Arrangements

We propose to clarify that the term law enforcement officials includes “district attorneys, attorneys general, and similar public attorneys and prosecutors,” and to add “corrections officials” to the list of entities with which a State may enter into agreements for cooperative arrangements. This addition encourages Child Support Enforcement agencies to collaborate with corrections institutions and community corrections officials (probation and parole agencies).

Section 302.65: Withholding of Unemployment Compensation

We propose to replace the term “State employment security agency” with “State workforce agency,” and the term “SESA” with “SWA” throughout this regulation for consistency with the terminology used by the Department of Labor.

Section 302.70: Required State Laws

We propose making a technical correction under § 302.70, “Required State laws,” to paragraph (a)(8). Under this paragraph, the State plan must provide that a State has laws and implements procedures under which all child support orders issued or modified in the State include an income withholding provision, so that the withholding remedy will be available if arrearages occur without the necessity of filing an application for IV-D services in accordance with § 303.100(i). We propose to replace the incorrect cross reference to § 303.100(i) with § 303.100(g).

Section 303.3: Location of Noncustodial Parents in IV-D Case

In paragraph (b)(5), we propose to replace the term “State employment security” with “State workforce.” As

discussed above, this change is for consistency with the terminology that is now used by the Department of Labor.

Section 303.7: Provision of Services in Intergovernmental IV-D Cases

Under this proposed rule, as discussed under Topic 1, paragraphs in § 303.11 are renumbered. We propose to make conforming changes to paragraph (d)(10) of this section to update the cross references.

Additionally, the final intergovernmental child support regulation, published in the **Federal Register** on July 2, 2010 and effective on January 3, 2011, inadvertently omitted reference to the \$25 annual fee in § 303.7. To address this, we propose to add paragraph (f), *Imposition and reporting of annual \$25 fee in interstate cases*, to provide that the title IV-D agency in the initiating State must impose and report the annual \$25 fee in accordance with § 302.33(e).

Section 303.11: Case Closure Criteria

In existing § 303.11(b)(2), which has been redesignated as § 303.11(b)(4), we propose to replace the outdated term “putative father” with the term “alleged father.” We also propose to replace the outdated term “putative father” with the term “alleged father” in existing § 303.11(b)(3)(ii), which has been redesignated as § 303.11(b)(6)(ii), and to remove the word “or” at the end of the sentence. In addition, we propose to add the word “or” to the end of proposed § 303.11(b)(6)(iii). Finally, in § 303.11(d), we propose to replace the reference to part 74 with a reference to part 92 as previously discussed.

Section 304.10: General Administrative Requirements

Section 304.10 references 45 CFR part 74 in three instances. We propose to replace these references with corresponding reference to part 92.

Section 304.12: Incentive Payments

We propose to delete outdated paragraphs § 304.12(c)(4) and (5) as they applied to fiscal years 1985, 1986, and 1987.

Section 304.20: Availability and Rate of Federal Financial Participation

Section 304.20(b)(1)(iii) references part 74. For reasons described earlier, we propose to replace that reference with a reference to 45 CFR 92.36(b). Additionally, we propose to delete § 304.20(c) and (d) as they apply to fiscal years 1997 and 1998 and are out of date.

Section 304.21: Federal Financial Participation in the Costs of Cooperative Arrangements With Courts and Law Enforcement Officials

We propose to clarify in paragraph (a) that the term law enforcement officials includes “corrections officials,” to be consistent with § 302.34.

Section 304.21(a)(1) lists activities for which FFP at the applicable matching rate is available in the costs of cooperative agreements with appropriate courts and law enforcement officials. We propose to modify the section to include a reference to § 304.20(b)(11), regarding medical support activities.

Section 304.23: Expenditures for Which Federal Financial Participation Is Not Available

Federal financial participation is the portion of a State’s operational expenditures that is paid by a Federal match and is available for necessary expenditures incurred under the State plan. Section 304.23(a) lists various programs for which FFP is not available for administering these programs. We propose to add the following programs to the list: Titles IV-B, which administers the Child Welfare Program; IV-E, which administers the Foster Care Program; and XXI, which administers the Children’s Health Insurance Program (CHIP) of the Act; and the Supplemental Nutrition Assistance Program (SNAP), which is administered under 7 U.S.C. Chapter 51. These additions are technical corrections intended to ensure that the regulations are updated and to clarify that child support FFP is not allowed for carrying out these programs’ responsibilities.

We also propose to repeal § 304.23(g). Language regarding medical support enforcement cooperative agreements was first added to the IV-D regulations in 1977 because section 1912 of the Act required the State Medicaid agencies to have cooperative agreements with the IV-D agencies to implement the Third party Liability program. Paragraph (g) was originally intended to prohibit child support FFP for cooperative agreements, under part 306, between child support and Medicaid agencies. However, § 304.23(g) is no longer necessary since the child support agencies now have increased responsibilities related to medical support enforcement activities as a result of PRWORA in 1996, which required States to enact a provision for health care coverage in all orders established or enforced by the child support agency. Today, OCSE does not require IV-D agencies to enter into agreements with the State Medicaid agencies.

Section 304.25: Treatment of Expenditures; Due Date

Section 304.25(a) references part 74. We propose to replace that reference with a reference to part 92.

Additionally, we propose to modify § 304.25(b). Section 304.25(b) requires a State to submit quarterly statements of expenditures under § 301.15 30 days after the end of the quarter. We propose to modify the number of days from 30 to 45. This proposed modification will afford a State more time to submit quarterly statements of expenditures.

Section 304.26: Determination of Federal Share of Collections

Additionally, OCSE proposes to make a technical correction to § 304.26(a)(1) by amending the Federal medical assistance percentage with respect to the distribution of child support collections for Title IV-E Foster Care cases in the U.S. territories and the District of Columbia. Section 457(c) of the Act indicates that the Federal medical assistance percentage rate for child support collections retained by Puerto Rico, the Virgin Islands, Guam, and American Samoa to reimburse TANF assistance is 75 percent. However, this rate does not apply to IV-E collections. The Federal medical assistance percentage rate for Foster Care maintenance payments in Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa is 55 percent, according to section 1905(b) of the Act. (This rate was 50 percent until January 1, 2011.)

Therefore, we propose amending § 304.26(a)(1) to clarify that the Federal medical assistance percentage rate for the distribution of child support collections to reimburse IV-E

collections is 55 percent for Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa according to section 1905(a) of the Act and implementing regulations at 45 CFR 302.52(b)(1) and (3). In addition, we also propose a technical fix to this provision to specify that the Federal medical assistance percentage rate to reimburse IV-E collections for the District of Columbia is 70 percent, according to section 1905(b)(3) of the Act. Please note that this rule only applies to States and other U.S. jurisdictions operating IV-D programs. This currently includes Puerto Rico, Guam, Virgin Islands, and the District of Columbia.

We also propose to delete paragraphs (b) and (c) of § 304.26. Those paragraphs require incentive and hold harmless payments to be made from the Federal

share of collections. This requirement is outdated. Incentive and hold harmless payments are no longer paid from the Federal share of collections.

Section 305.35: Reinvestment

We are proposing several technical changes to this section. A key provision of the Child Support Performance and Incentive Act of 1998 is that State IV-D agencies are required to reinvest the amount of Federal incentive payments received into their child support program. Section 458(f) of the Act provides that incentive funding shall be used to supplement rather than supplant existing funding. In order to ensure that this requirement is met in future years, OCSE promulgated regulations at 45 CFR 305.35 establishing a baseline level of funding that a State would be required to maintain. Although the regulations established a methodology for determining the baseline funding, States are uncertain about how to calculate their current spending level so that they could compare it to the baseline and evaluate their compliance with the statutory requirement.

In response to comments in the Final Rule, published on December 27, 2000 (65 FR 82177) regarding compliance with the prohibition of supplanting funds, we indicated that OCSE staff would have a role in monitoring this requirement. This was also addressed in AT-01-04, "Reinvestment of Child Support Incentive Payments."⁸¹ OCSE proposes adding this language to the regulation in order to clarify the potential consequences.

OCSE proposes adding language that would clarify the definition of State Current Spending Level for purposes of determining if the State has met or fulfilled the baseline expenditures level. This will ensure that a State does not supplant their baseline expenditure level with Federal incentive payments. OCSE is specifically soliciting comments regarding this definition.

To clarify the potential consequences of a State not maintaining the baseline expenditure level, we propose amending 45 CFR 305.35(d) by adding a sentence to the end of the paragraph to read: "Non-compliance will result in disallowances of incentive amounts equal to the amount of funds supplanted."

We propose redesignating paragraph (e) as paragraph (f) and adding a new paragraph (e) to clarify how the State Current Spending Level should be calculated. Using the Form OCSE-396A,

"Child Support Enforcement Program Expenditure Report," the State Current Spending Level will be calculated by determining the State Share of Total Expenditures Claimed for all four quarters of the fiscal year minus State Share of IV-D Administrative Expenditures Made Using Funds Received as Incentive Payments for all four quarters of the fiscal year, plus the Fees for the Use of the Federal Parent Locator Service (FPLS) for all four quarters of the fiscal year.

The equation for calculating the State Share of Total Expenditures Claimed is: Total Expenditures Claimed for the Current Quarter and the Prior Quarter Adjustments minus the Federal Share of Total Expenditures Claimed for the Current Quarter and Prior Quarter Adjustments. Using the Form OCSE-396A, this equation can also be translated as:

State Share of Expenditure = Line 7
(Columns A + C) – Line 7
(Columns B + D) for all four quarters of the fiscal year.

The equation for calculating the State Share of IV-D Administrative Expenditures Made Using Funds Received as Incentive Payments is:

IV-D Administrative Expenditures Made Using Funds Received as Incentive Payments for the Current Quarter and the Prior Quarter Adjustments minus the Federal Share of IV-D Administrative Expenditures Made Using Funds Received as Incentive Payments for the Current Quarter and Prior Quarter Adjustments. Using the Form OCSE-396A, this equation can also be translated as:

State Share of IV-D Administrative Expenditures Made Using Funds Received as Incentive Payments = Line 1a (Columns A + C) – Line 1a (Columns B + D) for all four quarters of the fiscal year.

The Fees for the Use of the FPLS can be computed by adding the FPLS fees claimed for all four quarters of the fiscal year. Using the Form OCSE-396A, this equation can also be translated as:

Fees for the Use of the FPLS = Line 10 (Columns B) for all four quarters of the fiscal year.

Section 305.63: Standards for Determining Substantial Compliance With IV-D Requirements

Section 305.63(d) erroneously cross references paragraph (b). We propose to replace that cross reference with a reference to paragraph (c). Our proposed revision will make this section consistent with the final rule on intergovernmental child support cases.

Section 308.2: Required Program Compliance Criteria

The term "State employment security agency" is removed wherever it appears and replaced by "State workforce agency." This change is for consistency with the terminology used by the Department of Labor, as discussed earlier. In addition, in subparagraph (c)(3)(i), we have capitalized Department of Motor Vehicles and used the section symbol for consistency.

Section 309.85: What records must a tribe or tribal organization agree to maintain in a Tribal IV-D plan?

Section 309.85(b) references part 74. We propose to replace that reference with a reference to part 92.

Section 309.130: How will Tribal IV-D programs be funded and what forms are required?

Section 309.130(b)(3) references Standard Form (SF) 269A, "Financial Status Report (Short Form)." That form is obsolete. We propose to replace that reference with a reference to SF 425, "Federal Financial Report," which is the new OMB approved form. To be consistent with our proposed change of § 301.15(b)(2), we also propose in this section to change the reporting due date requirements for the OCSE-34A, "Quarterly Report of Collections." This proposed modification will afford Tribes the same amount of time as States to submit reporting data. We are not making a similar due date change for the SF-425 report since this is determined by OMB.

Section 309 references part 74 in paragraphs (d)(3) and (h). We propose to replace these references with references to part 92.

Section 309.145: What costs are allowable for Tribal IV-D programs carried out under § 309.65(a) of this part?

Section 309.145(a)(3) references part 74. We propose to replace that reference with a reference to part 92.

Section 309.160: How will OCSE determine if Tribal IV-D program funds are appropriately expended?

This section references part 74. We propose to replace that reference with a reference to part 92.

Paperwork Reduction Act

Under the Paperwork Reduction Act (Pub. L. 104-13), all Departments are required to submit to OMB for review and approval any reporting or recordkeeping requirements inherent in a proposed or final rule. There are seven new requirements as a result of these

⁸¹ Available at: <http://www.acf.hhs.gov/programs/cse/pol/AT/2001/at-01-04.htm>.

regulations. These new regulatory requirements are one-time system		enhancements to the statewide child support system. The description and		total estimated burden for the changes are described in the chart below.		
Section and purpose	Instrument	Number of respondents: 54	Average burden hours per response	Total cost	National federal share	National state share
Added requirement under § 302.33 to generate notices.	Systems Modification.	One-time system enhancement.	300 hours × \$100 per 54 States to modify statewide child support system.	\$1,620,000	\$1,069,200	\$550,800
Added optional requirement under § 302.33 for revised applications for limited services.	Systems Modification.	One-time system enhancement.	5,000 hours × \$100 per 27 States to modify statewide child support system.	13,500,000	8,910,000	4,590,000
Added requirement under § 303.8 for notice of the right to request review and adjustment when parent is incarcerated.	Systems Modification.	One-time system enhancement.	200 hours × \$100 × 54 States	1,080,000	712,800	367,200
Added optional requirement under § 303.11 for notice to recipient when case closed because limited service has been completed.	Systems Modification.	One-time system enhancement.	1,000 hours × \$100 × 27 States.	2,700,000	1,782,000	918,000
Added requirement under § 303.11 for notice because the referring agency does not respond to a notice or does not provide information demonstrating that services are needed.	System Modification.	One-time system enhancement.	500 hours × \$100 × 54 States	2,700,000	1,782,000	918,000
Under § 303.72 discontinue notice requirement for interstate tax refund offset.	Systems Modification.	One-time system enhancement.	500 hours × \$100 × 54 States	2,700,000	1,782,000	918,000
Under § 307.11 develop automated procedures to identify the recipient of Supplemental Security Income (SSI).	Systems Modification.	One-time system enhancement.	400 hours × \$100 × 54 States	2,160,000	1,425,600	734,400
Under 42 CFR 433.152, regarding state plan amendments.	State plan amendment.	One time for 54 State Medicaid Programs, (which includes DC and 3 territories).	2 hours × \$36.63 × 54 States	3,956.04	1,978.02	1,978.02
Under 42 CFR 433.152, regarding cooperative agreements.	Cooperative agreement.	.....	10 hours × \$36.63 × 54 States.	19,780.20	9,890.10	9,890.10
Totals .....	.....	.....	.....	26,483,736.24	17,475,468.12	9,008,268.12

Part 302 contains information collection requirements as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Although we believe that the States will have to submit revised Child Support State plan pages for §§ 302.33, 302.56, and 302.70, we do not estimate any additional burden on the “State Plan for Child Support Collection and Establishment of Paternity Under Title IV-D of the Social Security Act,” and the State Plan Transmittal Form [OMB 0970–0017], which were reauthorized until July 31, 2014. When these forms were submitted for reauthorization, we had estimated that each State would be submitting eight State plan preprint pages annually as a result of changes in regulations, policies, and/or procedures.

Additionally, various forms are discussed for use in different processes. None of these discussions are new burdens. For example § 303.11 clarifies the current regulation that states are required to use the Income Withholding Order (IWO) form. Use of the OMB-approved form is already required. The

OMB Control # is 0970–0154 which expires on 06/30/2014. Section 303.35 clarifies that the OCSE–396A is used to calculate the state current spending level. This form is an OMB-approved form, Control # 0970–0181 which expires on 05/31/2017. Finally, there has been an update from use of form SF 269A to SF 425. This is a technical update with no addition burden. SF425 is an OMB-approved form Control #0348–0061 which expires 2/28/2015.

With regard to the proposed requirements for cooperative agreements for third party collections under 42 CFR 433.152, Medicaid State plan amendments will be required as well as amendments to state cooperative agreements. The one-time burden associated with the requirements under § 433.152 is the time and effort it would take each of the 54 State Medicaid Programs, which includes the District of Columbia and 3 territories, to submit State plan amendments and amend their cooperative agreements.

Specifically, we estimate that it will take each State 2 hours to amend their

state plans and 10 hours to amend their cooperative agreements. We estimate 12 total annual hours at a total estimated cost of \$23,736.24 with a State share of \$11,868.12. CMS reimburses States for 50 percent of the administrative costs incurred to administer the Medicaid State plan.

In deriving these figures, we used the hourly rate of \$36.63/hour for a GS-13-3 working in the Washington DC Baltimore area according to the calendar year 2013 federal pay scale.

Besides what is addressed above, no additional information collection burdens, as described in the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), are imposed by this proposed regulation.

ACF and CMS 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 and CMS, including whether the information will have practical utility;

2. Evaluating the accuracy of ACF's and CMS' estimates of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhancing the quality, usefulness, and clarity of the information to be collected; and

4. 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 proposed regulations between 30 and 60 days after publication of this document 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, either by fax to 202-395-6974 or by email to *OIRA_submission@omb.eop.gov*. Please mark faxes and emails to the attention of the desk officer for ACF.

Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), and enacted by the Regulatory Flexibility Act (Pub. L. 96-354), that this proposed regulation will not result in a significant impact on a substantial number of small entities. The primary impact is on State Governments. State Governments are not considered small entities under the Act.

Regulatory Impact Analysis

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if the regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity.) Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, harmonizing rules, and of promoting flexibility. While there are some costs associated with these regulations, they are not economically significant as defined under E.O. 12866. However, the regulation is significant and has been reviewed by OMB.

Within the NPRM an area with associated Federal costs is modifying

the child support statewide automated system for one-time system enhancements to accommodate new requirements such as notices, applications, and identifying noncustodial parents receiving SSI. This proposal has an approximately \$26,484,000 cost. There is a cost of \$26,460,000 to modify statewide IV-D systems for the 54 (with an assumption that 27 States will implement the optional requirements) States or Territories at a cost of \$100 an hour. A cost of approximately \$24,000 is designated to CMS' costs for State plan amendments and cooperative agreements. Another area associated with Federal costs is that of job services. We propose to allow FFP for certain job services for noncustodial parents responsible for paying child support. The estimated total average annual net cost (over the first five years) of the job services proposal is \$26,096,596 with \$18,592,939 as the Federal cost. Thus, the total net cost of the NPRM is \$52,580,596. These proposed regulations, along with proposed changes in recognition of technological advances, will improve the delivery of child support services, support the efforts of noncustodial parents to provide for their children, and improve the efficiency of operations.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, Tribal and local Governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. This \$100 million threshold was based on 1995 dollars. The current threshold, adjusted for inflation is \$141 million. This proposed rule would not impose a mandate that will result in the expenditure by State, local, and Tribal Governments, in the aggregate, or by the private sector, of more than \$141 million in any one year.

Congressional Review

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

Assessment of Federal Regulation and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a policy or regulation may negatively affect family well-being. If the agency's determination is affirmative, then the

agency must prepare an impact assessment addressing seven criteria specified in the law. The required review of the regulations and policies to determine their effect on family well-being has been completed, and this rule will have a positive impact on family well-being as defined in the legislation by proposing evidence-informed policies and practices that help to ensure that noncustodial parents support their children more consistently and reliably as they grow up.

Executive Order 13132

Executive Order 13132 prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. We do not believe the regulation has federalism impact as defined in the Executive Order. However, consistent with Executive Order 13132, the Department specifically solicits comments from State and local government officials on this proposed rule.

List of Subjects

42 CFR Part 433

Administrative practice and procedure, Child support, Claims, Grant programs—health, Medicaid, Reporting and recordkeeping requirements.

45 CFR Part 301

Child support, State plan approval and grant procedures.

45 CFR Part 302

Child support, State plan requirements.

45 CFR Part 303

Child support, Standards for program operations.

45 CFR Part 304

Child support, Federal financial participation.

45 CFR Part 305

Child support, Program performance measures, Standards, Financial incentives, Penalties.

45 CFR Part 307

Child support, Computerized support enforcement systems.

45 CFR Part 308

Child support, Annual State self-assessment review and report.

45 CFR Part 309

Child support, Grant programs—social programs, Indians, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Programs No. 93.563, Child Support Enforcement Program.)

Dated: August 26, 2014.

Mark Greenberg,

Acting Assistant Secretary for Children and Families.

Dated: September 16, 2014.

Marilyn Tavenner,

Administrator for the Centers for Medicare & Medicaid Services.

Approved: September 29, 2014.

Sylvia M. Burwell,

Secretary of Health and Human Services.

For the reasons discussed above, the Department of Health and Human Services proposes the following changes to 42 CFR Part 433 and 45 CFR Chapter III as set forth below:

Centers for Medicare and Medicaid Services**42 CFR Chapter IV****PART 433—STATE FISCAL ADMINISTRATION**

■ 1. The authority citation for part 433 is revised to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

■ 2. Section 433.152 is amended by revising paragraph (b) to read as follows:

§ 433.152 Requirements for cooperative agreements for third party collections.

* * * * *

(b) Agreements with title IV-D agencies must specify that:

(1) The Medicaid agency may not refer a case for medical support enforcement when the following criteria have been met:

(i) The Medicaid referral is based solely upon health care services, including contract health services, provided through an Indian Health Program (as defined at 25 U.S.C. 1603(12)) to a child who is eligible for health care services from the Indian Health Service (IHS).

(ii) [Reserved]

(2) The Medicaid agency will provide reimbursement to the IV-D agency only for those child support services performed that are not reimbursable by the Office of Child Support Enforcement under title IV-D of the Act and that are necessary for the collection of amounts for the Medicaid program.

Administration for Children and Families**45 CFR Chapter III****PART 301—STATE PLAN APPROVAL AND GRANT PROCEDURES**

■ 3. The authority citation for part 301 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 659a, 660, 664, 666, 667, 1301, and 1302.

■ 4. Amend § 301.1 by revising the first sentence of the definition of “Procedures” and adding the definition of “Record” in alphabetical order to read as follows:

§ 301.1 General definitions.

* * * * *

Procedures means a set of instructions in a record which describe in detail the step by step actions to be taken by child support enforcement personnel in the performance of a specific function under the State’s IV-D plan. * * *

* * * * *

Record means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

* * * * *

■ 5. Amend § 301.13 by revising the first sentence of the introductory text and paragraphs (e) and (f) to read as follows:

§ 301.13 Approval of State plans and amendments.

The State plan consists of records furnished by the State to cover its Child Support Enforcement program under title IV-D of the Act. * * *

* * * * *

(e) *Prompt approval of the State plan.* The determination as to whether the State plan submitted for approval conforms to the requirements for approval under the Act and regulations issued pursuant thereto shall be made promptly and not later than the 90th day following the date on which the plan submittal is received in OCSE Regional Program Office, unless the Regional Office has secured from the IV-D agency an agreement, which is reflected in a record, to extend that period.

(f) *Prompt approval of plan amendments.* Any amendment of an approved State plan may, at the option of the State, be considered as a submission of a new State plan. If the State requests that such amendments be so considered, the determination as to its conformity with the requirements for approval shall be made promptly and not later than the 90th day following the date on which such a request is received

in the Regional Office with respect to an amendment that has been received in such office, unless the Regional Office has secured from the State agency an agreement, which is reflected in a record, to extend that period.

* * * * *

■ 6. Amend § 301.15 by revising paragraphs (a), (b), (c), and (d), and by removing paragraph (e) to read as follows:

§ 301.15 Grants.

* * * * *

(a) *Financial reporting forms.* (1) *Form OCSE-396A: Child Support Enforcement Program Expenditure Report.* States submit this form quarterly to report the actual amount of State and Federal Share of title IV-D program expenditures and program income of the current quarter and to report the estimated amount of the State and Federal share of title IV-D program expenditures for the next quarter. This form is completed in accordance with published instructions. The signature of the authorized State program official on this document certifies that the reported expenditures and estimates are accurate and that the State has or will have the necessary State share of estimated program expenditures available when needed.

(2) *Form OCSE-34A: Child Support Enforcement Program Collection Report.* States submit this form quarterly to report the State and Federal share of child support collections received, distributed, disbursed, and remaining undistributed under the title IV-D program. This form is completed in accordance with published instructions. The signature of the authorized State program official on this document certifies that the reported amounts are accurate. The Federal share of actual program expenditures and collections and the Federal share of estimated program expenditures reported on Form OCSE-396A and the Federal share of child support collections reported on Form OCSE-34A are used in the computation of quarterly grant awards issued to the State.

(b) *Submission, review, and approval.*

(1) *Manner of submission.* The Administration for Children and Families (ACF) maintains an On-line Data Collection (OLDC) system available to every State. States must use OLDC to submit reporting information electronically. To use OLDC, a State must request access from the ACF Office of Grants Management and use an approved digital signature.

(2) *Schedule of submission.* Forms OCSE-396A and OCSE-34A must be electronically submitted no later than 45

days following the end of the each fiscal quarter. No submission, revisions, or adjustments of the financial reports submitted for any quarter of the fiscal year will be accepted by OCSE later than December 31, 3 months after the end of the fiscal year.

(3) *Review and approval.* The data submitted on Forms OCSE-396A and OCSE-34A are subject to analysis and review by the Regional Grants Officer in the appropriate ACF Regional Office and approval by the Director, Office of Grants Management, in the ACF central office. In the course of this analysis, review, and approval process, any reported program expenditures that cannot be determined to be allowable are subject to the deferral procedures found at 45 CFR 201.15 or the disallowance process found at 45 CFR 304.29 and 201.14 and 45 CFR part 16.

(c) *Grant award.* (1) *Award documents.* The grant award consists of a signed award letter and an accompanying "Computation of Grant Award" to detail the award calculation.

(2) *Award calculation.* The quarterly grant award is based on the information submitted by the State on the financial reporting forms and consists of:

(i) An advance of funds for the next quarter, based on the State's approved estimate; and

(ii) The reconciliation of the advance provided for the current quarter, based on the State's approved expenditures.

(3) *Access to funds.* A copy of the grant documents are provided to the HHS Division of Payment Management, which maintains the Payment Management System (PMS). The State is able to request a drawdown of funds from PMS through a commercial bank and the Federal Reserve System against a continuing letter of credit. The letter of credit system for payment of advances of Federal funds was established pursuant to Treasury Department regulations. (Circular No. 1075).

(d) *General requirements.* A copy of the Terms and Conditions applicable to this program is available to the State annually. In general, the following Federal regulations govern the administration of this program:

(1) 2 CFR part 225, "Cost Principles for State, Local and Indian Tribal Governments (OMB Circular A-87);"

(2) 45 CFR part 92, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Tribal Governments," with the following exceptions:

(i) 45 CFR 92.24, "Matching or cost sharing;" and

(ii) 45 CFR 92.41, "Financial reporting;" and

(3) 45 CFR part 95, "General Administration—Grant Programs (Public Assistance, Medical Assistance and State Children's Health Insurance Programs)."

PART 302—STATE PLAN REQUIREMENTS

■ 7. The authority citation for part 302 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 659a, 660, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

■ 8. Revise § 302.14 to read as follows:

§ 302.14 Fiscal policies and accountability.

The State plan shall provide that the IV-D agency, in discharging its fiscal accountability, will maintain an accounting system and supporting fiscal records adequate to assure that claims for Federal funds are in accord with applicable Federal requirements. The retention and custodial requirements for these records are prescribed in 45 CFR part 92.

■ 9. Amend § 302.15 by revising paragraph (a)(7), redesignating the undesignated concluding paragraph of paragraph (a) as paragraph (a)(8), and revising newly redesignated paragraph (a)(8) to read as follows:

§ 302.15 Reports and maintenance of records.

* * * * *

(a) * * *

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

(8) The retention and custodial requirements for the records in this section are prescribed in 45 CFR part 92.

* * * * *

■ 10. Amend § 302.32 by revising the introductory text, paragraph (a), paragraph (b) introductory text, and paragraph (b)(1) to read as follows:

§ 302.32 Collection and disbursement of support payments by the IV-D Agency.

The State plan shall provide that:

(a) The IV-D agency must establish and operate a State Disbursement Unit (SDU) for the collection and disbursement of payments under support orders—

(1) In all cases being enforced under the State IV-D plan; and

(2) In all cases not being enforced under the State IV-D plan in which the support order is initially issued in the State on or after January 1, 1994, and in which the income of the noncustodial parent is subject to withholding pursuant to section 466(a)(8)(B) of the Act.

(b) Timeframes for disbursement of support payments by SDUs under section 454B of the Act.

(1) In interstate IV-D cases, amounts collected by the responding State on behalf of the initiating State must be forwarded to the initiating State within 2 business days of the date of receipt by the SDU in the responding State, in accordance with § 303.7(d)(6)(v) of this chapter.

* * * * *

■ 11. Amend § 302.33 by revising paragraph (a)(4), adding paragraph (a)(6), and revising the first sentence of paragraph (d)(2) to read as follows:

§ 302.33 Services to individuals not receiving title IV-A assistance.

(a) * * *

(4) Whenever a family is no longer eligible for assistance under the State's title IV-A and Medicaid programs, the IV-D agency must notify the family, within 5 working days of the notification of ineligibility, that IV-D services will be continued unless the family notifies the IV-D agency that it no longer wants services but instead wants to close the case. This notice must inform the family of the benefits and consequences of continuing to receive IV-D services, including the available services and the State's fees, cost recovery and distribution policies. This requirement to notify the family that services will be continued, unless the family notifies the IV-D agency to the contrary, also applies when a child is no longer eligible for IV-E foster care, but only in those cases that the IV-D agency determines that such services and notice would be appropriate.

* * * * *

(6) The State may elect in its State plan to allow an individual under paragraph (a)(1)(i) of this section who files an application to request limited services. If the State chooses this option, the State must define how this process will be implemented and must establish and use procedures, which are reflected in a record, that specifies when and what limited services will be allowed. The State's procedures must require that a limited services applicant requesting enforcement services will receive all mandatory enforcement services, if appropriate, including income withholding, Federal Tax Refund Offset, and credit bureau reporting. An application will be considered full-service unless the parent specifically applies for limited services in accordance with the State's procedures. If one parent specifically requests limited services and the other parent requests full services, the case will automatically receive full services. The

State will be required to charge the application and service fees required under paragraphs (c) and (e) of this section for a limited service, and may recover costs in accordance with paragraph (d) of this section if the State has chosen this option in its State plan. The State must provide the applicant an application form with information on the range of available services, consequences of selecting a limited service, and an explanation that the case will be closed when the limited service is completed.

* * * * *

(d) * * *

(2) A State that recovers standardized costs under paragraph (d)(1) of this section shall develop a methodology, which is reflected in a record, to determine standardized costs which are as close to actual costs as is possible.

* * *

■ 12. Amend § 302.34 by revising the first sentence to read as follows:

§ 302.34 Cooperative arrangements.

The State plan shall provide that the State will enter into agreements, which are reflected in a record, for cooperative arrangements under § 303.107 of this chapter with appropriate courts; law enforcement officials, such as district attorneys, attorneys general, and similar public attorneys and prosecutors; corrections officials; Indian tribes or tribal organizations.

* * * * *

■ 13. Revise § 302.38 to read as follows:

§ 302.38 Payments to the family.

The State plan shall provide that any payment required to be made under §§ 302.32 and 302.51 to a family will be made directly to the resident parent, legal guardian, or caretaker relative having custody of or responsibility for the child or children.

■ 14. Amend § 302.50 by revising paragraph (b)(2) to read as follows:

§ 302.50 Assignment of rights to support.

* * * * *

(b) * * *

(2) If there is no court or administrative order, an amount determined in a record by the IV-D agency as part of the legal process referred to in paragraph (a)(2) of this section in accordance with the requirements of § 302.56.

* * * * *

■ 15. Revise § 302.56 to read as follows:

§ 302.56 Guidelines for setting child support awards.

(a) Within one year after completion of the State's next quadrennial review of

its guidelines, pursuant to § 302.56(e), as a condition of approval of its State plan, the State must establish one set of guidelines by law or by judicial or administrative action for setting and modifying child support award amounts within the State that meet the requirements in this section.

(b) The State must have procedures for making the guidelines available to all persons in the State whose duty it is to set child support award amounts.

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

(1) Take into consideration actual earnings and income of the noncustodial parent;

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

(3) Address how the parents will provide for the child(ren)'s health care needs through health insurance coverage and/or through cash medical support in accordance with § 303.31 of this chapter;

(4) Take into consideration the noncustodial parent's subsistence needs and provide that any amount ordered for support be based upon available data related to the parent's actual earnings, income, assets, or other evidence of ability to pay, such as testimony that income or assets are not consistent with a noncustodial parent's current standard of living; and

(5) Provide that incarceration may not be treated as voluntary unemployment in establishing or modifying support orders.

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

(e) The State must review, and revise, if appropriate, the guidelines established under paragraph (a) of this section at least once every four years to ensure that their application results in the determination of appropriate child support award amounts.

(f) The State must provide that there will 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 guidelines established under paragraph (a) of this section is the correct amount of child support to be awarded.

(g) 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 will be sufficient to rebut the presumption in that case, as determined under criteria established by the State.

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.

(h) Child support awards established under paragraph (a) of this section may recognize parenting time provisions pursuant to State child support guidelines or when both parents have agreed to the parenting time provisions.

(i) As part of the review of a State's guidelines required under paragraph (e) of this section, a State must consider economic data on the cost of raising children and analyze case data, gathered through sampling or other methods, on the application of, and deviations from, the guidelines. The analysis of the data must be used in the State's review of the guidelines to ensure that deviations from the guidelines are limited.

Deviation from the presumptive child support amount may be based on factors established by the State.

■ 16. Amend § 302.65 by:

■ a. In paragraph (a), removing the definition of "State employment security agency";

■ b. In paragraph (a), adding the definition of "State workforce agency" in alphabetical order;

■ c. Removing the term "SESA" wherever it appears and adding in its place the term "SWA" in paragraphs (c)(1), (2), and (5) through (7); and

■ d. Revising paragraphs (b) and (c)(3).

The revisions and additions read as follows.

§ 302.65 Withholding of unemployment compensation.

* * * * *

(a) * * *

State workforce agency or *SWA* means the State agency charged with the administration of the State unemployment compensation laws in accordance with title III of the Act.

* * * * *

(b) *Agreement.* The State IV-D agency shall enter into an agreement, which is reflected in a record, with the SWA in its State for the purpose of withholding unemployment compensation from individuals with unmet support obligations being enforced by the IV-D agency. The IV-D agency shall agree only to a withholding program that it expects to be cost-effective and to reimbursement for the SWA's actual, incremental costs of providing services to the IV-D agency.

(c) * * *

(3) Establish and use criteria, which are reflected in a record, for selecting

cases to pursue via the withholding of unemployment compensation for support purposes. These criteria must be designed to insure maximum case selection and minimal discretion in the selection process.

* * * * *

- 17. Amend § 302.70, by revising paragraphs (a)(5)(v), (a)(8), and the first sentence of paragraph (d)(2) to read as follows:

§ 302.70 Required State laws.

(a) * * *
(5) * * *

(v) Procedures which provide that any objection to genetic testing results must be made in writing within a specified number of days before any hearing at which such results may be introduced into evidence; and if no objection is made, a report of the test results, which is reflected in a record, is admissible as evidence of paternity without the need for foundation testimony or other proof of authenticity or accuracy;

* * * * *

(8) Procedures under which all child support orders which are issued or modified in the State will include provision for withholding from income, in order to assure that withholding as a means of collecting child support is available if arrearages occur without the necessity of filing an application for services under § 302.33, in accordance with § 303.100(g) of this chapter.

* * * * *

(d) * * *

(2) *Basis for granting exemption.* The Secretary will grant a State, or political subdivision in the case of section 466(a)(2) of the Act, an exemption from any of the requirements of paragraph (a) of this section for a period not to exceed 5 years if the State demonstrates that compliance would not increase the effectiveness and efficiency of its Child Support Enforcement program. * * *

* * * * *

- 18. Section 302.76 is added to read as follows:

§ 302.76 Job services.

The State plan may provide for job services for eligible noncustodial parents pursuant to § 303.6(c)(5) of this chapter. If the State chooses this option, the State plan must include a description of the job services and the eligibility criteria.

- 19. Amend § 302.85 by revising paragraph (b)(2)(ii) to read as follows:

§ 302.85 Mandatory computerized support enforcement system.

* * * * *

(b) * * *
(2) * * *

(ii) The State provides assurances, which are reflected in a record, that steps will be taken to otherwise improve the State's Child Support Enforcement program.

PART 303—STANDARDS FOR PROGRAM OPERATIONS

- 20. The authority citation for part 303 is revised to read as follows:

Authority: 42 U.S.C. 651 through 658, 659a, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), 1396(k), and 25 U.S.C. 1603(12) and 1621e.

- 21. Amend § 303.2 by revising the first sentence of paragraph (a)(2) and revising paragraph (a)(3) to read as follows:

§ 303.2 Establishment of cases and maintenance of case records.

(a) * * *

(2) When an individual requests an application for IV-D services, provide an application to the individual on the day the individual makes a request in person or send an application to the individual within no more than 5 working days of a request made by telephone or in a record. * * *

(3) Accept an application as filed on the day it and the application fee are received. An application is a record that is provided or used by the State which indicates that the individual is applying for child support enforcement services under the State's title IV-D program and is signed, electronically or otherwise, by the individual applying for IV-D services.

* * * * *

§ 303.3 [Amended]

- 22. Amend § 303.3 by:
- a. In paragraph (b)(1), adding "corrections institutions;" after "unions;" and before "fraternal organizations;"; and
- b. In paragraph (b)(5), removing the term "State employment security" and adding the term "State workforce" in its place.
- 23. Amend § 303.5 by revising paragraph (g)(6) to read as follows:

§ 303.5 Establishment of paternity.

* * * * *

(g) * * *

(6) The State must provide training, guidance, and instructions, which are reflected in a record, regarding voluntary acknowledgment of paternity, as necessary to operate the voluntary paternity establishment services in the hospitals, State birth record agencies, and other entities designated by the State and participating in the State's voluntary paternity establishment program.

* * * * *

- 24. Amend § 303.6 by:
- a. Removing "and" at the end of paragraph (c)(3);
- b. Redesignating paragraph (c)(4) as paragraph (c)(6); and
- c. Adding paragraphs (c)(4) and (5).

The revision and addition read as follows:

§ 303.6 Enforcement of support obligations.

* * * * *

(c) * * *

(4) Having procedures ensuring that enforcement activity in civil contempt proceedings takes into consideration the subsistence needs of the noncustodial parent, and ensures that a purge amount the noncustodial parent must pay in order to avoid incarceration takes into consideration actual earnings and income and the subsistence needs of the noncustodial parent. A purge amount must be based upon a written evidentiary finding that the noncustodial parent has the actual means to pay the amount from his or her current income or assets; and

(5) As elected by the State in § 302.76 of this chapter, provide job services to eligible noncustodial parents. In addition to eligibility criteria which may be set by the IV-D agency, the noncustodial parent must have a IV-D case, have a current child support order, be unemployed or not making regular child support payments, not be receiving TANF assistance or assistance funded with State dollars counting toward TANF maintenance of effort, not be enrolled in a Supplemental Nutrition Assistance Program Employment and Training program under 7 CFR 273.7 and 273.24, not be receiving the same job services under Workforce Investment Act (WIA) under 20 CFR parts 652 and 660 through 671, and not be receiving a Federal Pell Grant under 34 CFR part 690. These job services may include:

- (i) Job search assistance;
- (ii) Job readiness training;
- (iii) Job development and job placement services;
- (iv) Skills assessments to facilitate job placement;
- (v) Job retention services;
- (vi) Certificate programs and other skills training directly related to employment, which may include activities to improve literacy and basic skills, such as programs to complete high school or a General Education Development (GED) certificate, as long as they are included in the same job services plan; and

(vii) Work supports, such as transportation assistance, uniforms, and tools.

* * * * *

■ 25. Amend § 303.7 by revising paragraph (d)(10) and adding paragraph (f) to read as follows:

§ 303.7 Provision of services in intergovernmental IV-D cases.

* * * * *

(d) * * *

(10) Notify the initiating agency when a case is closed pursuant to §§ 303.11(b)(17) through (19) and 303.7(d)(9).

* * * * *

(f) *Imposition and reporting of annual \$25 fee in interstate cases.* The title IV-D agency in the initiating State must impose and report the annual \$25 fee in accordance with § 302.33(e) of this chapter.

■ 26. Amend § 303.8 by:

- a. Redesignating paragraphs (b)(2) through (6) as paragraphs (b)(3) through (7), respectively;
- b. Adding paragraph (b)(2); and
- c. Revising newly redesignated paragraph (b)(7) and paragraph (d).

The addition and revision read as follows:

§ 303.8 Review and adjustment of child support orders.

* * * * *

(b) * * *

(2) The State may elect in its State plan to initiate review of an order, after being notified that a noncustodial parent will be incarcerated for more than 90 days and without the need for a specific request, and, upon notice to both parents, adjust the order, if appropriate, pursuant to paragraph (b)(1)(i) of this section.

* * * * *

(7) The State must provide notice—

(i) Not less than once every 3 years to both parents subject to the order informing the parents of their right to request the State to review and, if appropriate, adjust the order consistent with this section. The notice must specify the place and manner in which the request should be made. The initial notice may be included in the order.

(ii) If the State has not elected paragraph (b)(2) of this section, when the IV-D agency learns that a noncustodial parent is incarcerated, to the incarcerated noncustodial parent and the custodial parent informing them of the right to request the State to review and, upon request, to adjust the order consistent with this section. The notice must specify, at a minimum, the place

and manner in which the request should be made.

* * * * *

(d) *Health care needs must be an adequate basis.* The need to provide for the child's health care needs in the order, through health insurance or other means, must be an adequate basis under State law to initiate an adjustment of an order, regardless of whether an adjustment in the amount of child support is necessary.

* * * * *

■ 27. Revise § 303.11 to read as follows:

§ 303.11 Case closure criteria.

(a) The IV-D agency shall establish a system for case closure.

(b) The IV-D agency may elect to close a case if the case meets at least one of the following criteria and supporting documentation for the case closure decision is maintained in the case record:

(1) There is no longer a current support order and arrearages are under \$500 or unenforceable under State law;

(2) There is no longer a current support order and all arrearages in the case are assigned to the State;

(3) There is no longer a current support order, the children have reached the age of majority, the noncustodial parent is entering or has entered long-term care arrangements (such as a residential care facility or home health care), and the noncustodial parent has no income or assets available above the subsistence level that could be levied or attached for support;

(4) The noncustodial parent or alleged father is deceased and no further action, including a levy against the estate, can be taken;

(5) The noncustodial parent is living with the minor child (as the primary caregiver or in an intact two parent household), and the IV-D agency has determined that services are not appropriate;

(6) Paternity cannot be established because:

(i) The child is at least 18 years old and action to establish paternity is barred by a statute of limitations which meets the requirements of § 302.70(a)(5) of this chapter;

(ii) A genetic test or a court or administrative process has excluded the alleged father and no other alleged father can be identified;

(iii) In accordance with § 303.5(b), the IV-D agency has determined that it would not be in the best interests of the child to establish paternity in a case involving incest or forcible rape, or in any case where legal proceedings for adoption are pending; or

(iv) The identity of the biological father is unknown and cannot be identified after diligent efforts, including at least one interview by the IV-D agency with the recipient of services;

(7) The noncustodial parent's location is unknown, and the State has made diligent efforts using multiple sources, in accordance with § 303.3, all of which have been unsuccessful, to locate the noncustodial parent:

(i) Over a 2-year period when there is sufficient information to initiate an automated locate effort; or

(ii) Over a 6-month period when there is not sufficient information to initiate an automated locate effort; or

(iii) After a 1-year period when there is sufficient information to initiate an automated locate effort, but locate interfaces are unable to verify a Social Security Number;

(8) The IV-D agency has determined that throughout the duration of the child's minority (or after the child has reached the age of majority), the noncustodial parent cannot pay support and shows no evidence of support potential because the parent has been institutionalized in a psychiatric facility, is incarcerated, has a medically-verified total and permanent disability, or has had multiple referrals for services by the State over a 5-year period which have been unsuccessful. The State must also determine that the noncustodial parent has no income or assets available above the subsistence level that could be levied or attached for support;

(9) The noncustodial parent's sole income is from:

(i) Supplemental Security Income (SSI) payments made pursuant to sections 1601 *et seq.*, of title XVI of the Act, 42 U.S.C. 1381 *et seq.*;

(ii) both SSI and benefits under title II of the Act; or

(iii) other needs-based benefits not subject to garnishment;

(10) The noncustodial parent is a citizen of, and lives in, a foreign country, does not work for the Federal government or a company with headquarters or offices in the United States, and has no reachable domestic income or assets; and State has been unable to establish reciprocity with the country;

(11) The IV-D agency has provided location-only services as requested under § 302.35(c)(3) of this chapter;

(12) The non-IV-A recipient of services requests closure of a case and there is no assignment to the State of medical support under 42 CFR 433.146 or of arrearages which accrued under a support order;

(13) The IV-D agency has completed a limited service under § 302.33(a)(6) of this chapter;

(14) There has been a finding by the responsible State agency of good cause or other exceptions to cooperation with the IV-D agency and the State or local assistance program, such as IV-A, IV-D, IV-E, and Medicaid, which has determined that support enforcement may not proceed without risk of harm to the child or caretaker relative;

(15) In a non-IV-A case receiving services under § 302.33(a)(1)(i) or (iii) of this chapter, or under § 302.33(a)(1)(ii) when cooperation with the IV-D agency is not required of the recipient of services, the IV-D agency is unable to contact the recipient of services despite a good faith effort to contact the recipient through at least two different methods;

(16) In a non-IV-A case receiving services under § 302.33(a)(1)(i) or (iii) of this chapter, or under § 302.33(a)(1)(ii) when cooperation with the IV-D agency is not required of the recipient of services, the IV-D agency documents the circumstances of the recipient's noncooperation and an action by the recipient of services is essential for the next step in providing IV-D services;

(17) The IV-D agency documents failure by the initiating agency to take an action which is essential for the next step in providing services;

(18) The initiating agency has notified the responding State that the initiating State has closed its case under § 303.7(c)(11);

(19) The initiating agency has notified the responding State that its intergovernmental services are no longer needed;

(20) Another assistance program, including IV-A, IV-E, and Medicaid has referred a case to the IV-D agency that is inappropriate to establish, enforce, or continue to enforce a child support order and the custodial or noncustodial parent has not applied for services; or

(21) The case has been transferred to a Tribal IV-D agency and the State IV-D agency has complied with the following procedures:

(i) Before transferring the case to a Tribal IV-D agency:

(A) The recipient of services requested the State to transfer its case to the Tribal IV-D agency; or

(B) The IV-D agency has notified the recipient of services of its intent to transfer the case to the Tribal IV-D agency and the recipient did not respond to the notice to transfer the case within 60 calendar days from the date notice was provided;

(ii) The IV-D agency completely and fully transferred the case; and

(iii) The IV-D agency notified the recipient of services that the case has been transferred to the Tribal IV-D agency.

(c) The IV-D agency must close a case and maintain supporting documentation for the case closure decision when the following criteria have been met:

(1) The child is eligible for health care services from the Indian Health Service (IHS); and

(2) The IV-D case was opened because of a Medicaid referral based solely upon health care services, including contract health services, provided through an Indian Health Program (as defined at 25 U.S.C. 1603(12)).

(d) The IV-D agency must have the following requirements for case closure notification and case reopening:

(1) In cases meeting the criteria in paragraphs (b)(1) through (10) and (b)(15) through (16) of this section, the State must notify the recipient of services in writing 60 calendar days prior to closure of the case of the State's intent to close the case.

(2) In an intergovernmental case meeting the criteria for closure under paragraph (b)(17) of this section, the responding State must notify the initiating agency, in a record, 60 calendar days prior to closure of the case of the State's intent to close the case.

(3) The case must be kept open if the recipient of services, or the initiating agency supplies information in response to the notice provided under paragraph (d)(1) or (2) of this section which could lead to the establishment of paternity or a support order or enforcement of an order, or, in the instance of paragraph (b)(15) of this section, if contact is reestablished with the recipient of services.

(4) In a case meeting the criteria for closure in paragraph (b)(20) or (c) of this section, the IV-D agency must notify the referring agency, in a record, 60 calendar days prior to closure of the case of the State's intent to close the case.

(5) If the referring agency does not respond to the notice provided under paragraph (d)(4) of this section, or does not provide information that indicates that child support services are needed for the case, the IV-D agency may close the case.

(6) For cases closed pursuant to paragraphs (b)(13) and (d)(5) of this section, the State must notify the recipient that the case has been closed within 30 calendar days of closing the case. This notice must also provide information regarding reapplying for child support services and the

consequences of receiving services, including any State fees, cost recovery, and distribution policies. If the recipient reapplies for child support services in a case that was closed pursuant to paragraph (b)(13) of this section, the recipient will complete a new application for IV-D services and pay any applicable fee. If the recipient reapplies for services in a case that was closed pursuant to (d)(5), the recipient will complete a new application for IV-D services but will not be charged a fee.

(7) If the case is closed, the former recipient of services may request at a later date that the case be reopened if there is a change in circumstances which could lead to the establishment of paternity or a support order or enforcement of an order by completing a new application for IV-D services and paying any applicable application fee.

(e) The IV-D agency must retain all records for cases closed pursuant to this section for a minimum of three years, in accordance with 45 CFR part 92.

■ 28. Amend § 303.31 by revising paragraphs (a)(2), (a)(3), (b)(1), (b)(2), (b)(3) introductory text, (b)(3)(i), and (b)(4) to read as follows:

§ 303.31 Securing and enforcing medical support obligations.

(a) * * *

(2) Health insurance includes fee for service, health maintenance organization, preferred provider organization, and other types of private and public coverage which is available to either parent, under which medical services could be provided to the dependent child(ren).

(3) Cash medical support or the cost of health insurance is considered reasonable in cost if the cost to the parent responsible for providing medical support does not exceed five percent of his or her gross income or, at State option, a reasonable alternative income-based numeric standard defined in State law, regulations, or court rule having the force of law or State child support guidelines adopted in accordance with § 302.56(c) of this chapter.

(b) * * *

(1) Petition the court or administrative authority to:

(i) Include health insurance that is accessible to the child(ren), as defined by the State, and is available to the parent responsible for providing medical support at reasonable cost, as defined under paragraph (a)(3) of this section, in new or modified court or administrative orders for support; and

(ii) Determine how to allocate the cost of coverage between the parents.

(2) If health insurance described in paragraph (b)(1) of this section is not available at the time the order is entered or modified, petition to include cash medical support in new or modified orders until such time as health insurance, that is accessible and reasonable in cost as defined under paragraph (a)(3) of this section, becomes available. In appropriate cases, as defined by the State, cash medical support may be sought in addition to health insurance coverage.

(3) Establish criteria, which are reflected in a record, to identify orders that do not address the health care needs of children based on—

(i) Evidence that health insurance may be available to either parent at reasonable cost, as defined under paragraph (a)(3) of this section; and

(4) Petition the court or administrative authority to modify support orders, in accordance with State child support guidelines, for cases identified in paragraph (b)(3) of this section to include health insurance and/or cash medical support in accordance with paragraphs (b)(1) and (2) of this section.

■ 29. Amend § 303.72 by revising paragraph (d)(1) to read as follows:

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

* * * * *

(d) * * *

(1) The State referring past-due support for offset must, in interstate situations, notify any other State involved in enforcing the support order when it receives the offset amount from the Secretary of the U.S. Treasury.

* * * * *

■ 30. Amend § 303.100 by revising paragraph (e)(1) introductory text and adding paragraphs (h) and (i) to read as follows:

§ 303.100 Procedures for income withholding.

* * * * *

(e) *Notice to the employer for immediate and initiated withholding.*

(1) To initiate withholding, the State must send the noncustodial parent's employer a notice using the required OMB-approved Income Withholding for Support form that includes the following:

* * * * *

(h) *Notice to employers in all child support orders.* The notice to employers in all child support orders must be on an OMB-approved Income Withholding for Support form.

(i) *Payments sent to the SDU in child support order not enforced under the*

State IV-D plan. Income withholding payments made under child support orders initially issued in the State on or after January 1, 1994 that are not being enforced under the State IV-D plan must be sent to the State Disbursement Unit for disbursement to the family in accordance with sections 454B and 466(a)(8) and (b)(5) of the Act and § 302.32(a) of this chapter.

PART 304—FEDERAL FINANCIAL PARTICIPATION

■ 31. The authority for part 304 continues to read as follows:

Authority: 42 U.S.C. 651 through 655, 657, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

■ 32. Revise § 304.10 to read as follows:

§ 304.10 General administrative requirements.

As a condition for Federal financial participation, the provisions of part 92 of this title (with the exception of 45 CFR 92.24, Matching or Cost Sharing and 45 CFR 92.41, Financial Reporting) establishing uniform administrative requirements and cost principles shall apply to all grants made to States under this part.

§ 304.12 [Amended]

■ 33. Amend § 304.12 by removing paragraphs (c)(4) and (5).
 ■ 34. Amend § 304.20 by:
 ■ a. Revising paragraphs (a)(1), (b) introductory text, (b)(1)(iii) introductory text, (b)(1)(viii) introductory text, (b)(1)(viii)(A), (b)(1)(ix), (b)(2) introductory text, (b)(2)(vii), (b)(3) introductory text, and (b)(11);
 ■ b. Removing the “.” at the end of paragraph (b)(1)(viii)(C) and adding a “;” in its place;
 ■ c. Redesignating paragraph (b)(3)(v) as paragraph (b)(3)(viii);
 ■ d. Adding paragraphs (b)(1)(viii)(D), (b)(1)(viii)(E), (b)(3)(v) through (vii), (b)(3)(ix), and (b)(12);
 ■ e. Removing “and” at the end of paragraph (b)(9); and
 ■ f. Removing paragraphs (c) and (d).

The additions and revisions read as follows:

§ 304.20 Availability and rate of Federal financial participation.

(a) * * *

(1) Necessary and reasonable expenditures for child support services and activities to carry out the State title IV-D plan;

* * * * *

(b) Services and activities for which Federal financial participation will be available will be those made to carry out the title IV-D State plan, including

obtaining child support, locating noncustodial parents, and establishing paternity, that are determined by the Secretary to be necessary and reasonable expenditures properly attributed to the Child Support Enforcement program, including, but not limited to the following:

(1) * * *

(iii) The establishment of all necessary agreements with other Federal, State, and local agencies or private providers to carry out Child Support Enforcement program activities in accordance with Procurement Standards, 45 CFR 92.36(b). These agreements may include:

* * * * *

(viii) The establishment of agreements with agencies administering the State's title IV-A and IV-E plans including criteria for:

(A) Referring cases to and from the IV-D agency;

* * * * *

(D) The procedures to be used to coordinate services; and

(E) Agreements to exchange data as authorized by law.

(ix) The establishment of agreements with State agencies administering Medicaid or CHIP, including criteria for:

(A) Referring cases to and from the IV-D agency;

(B) The procedures to be used to coordinate services; and

(C) Agreements to exchange data as authorized by law.

(2) The establishment of paternity, including, but not limited to:

* * * * *

(vii) Developing and providing to parents and family members, hospitals, State birth records agencies, and other entities designated by the State and participating in the State's voluntary paternity establishment program, under § 303.5(g) of this chapter, educational and outreach activities, written and audiovisual materials about paternity establishment and forms necessary to voluntarily acknowledge paternity; and

* * * * *

(3) The establishment and enforcement of support obligations including, but not limited to:

* * * * *

(v) Bus fare or other minor transportation expenses to enable custodial or noncustodial parties to participate in child support proceedings and related activities;

(vi) Services to increase *pro se* access to adjudicative and alternative dispute resolution processes in IV-D cases;

(vii) *De minimis* costs associated with the inclusion of parenting time provisions entered as part of a child

support order and incidental to a child support enforcement proceeding;

* * * * *

(ix) Job services activities pursuant to § 303.6(c)(5) of this chapter.

* * * * *

(11) Medical support activities as specified in §§ 303.30, 303.31, and 303.32 of this chapter; and

(12) Educational and outreach activities intended to inform the public, parents and family members, and young people who are not yet parents about the Child Support Enforcement program, responsible parenting and co-parenting, family budgeting, and other financial consequences of raising children when the parents are not married to each other.

■ 35. Amend § 304.21 by revising paragraphs (a) introductory text and (a)(1) to read as follows:

§ 304.21 Federal financial participation in the costs of cooperative arrangements with courts and law enforcement officials.

(a) *General.* Subject to the conditions and limitations specified in this part, Federal financial participation (FFP) at the applicable matching rate is available in the costs of cooperative agreements with appropriate courts and law enforcement officials in accordance with the requirements of § 302.34 of this chapter. *Law enforcement officials* means district attorneys, attorneys general, similar public attorneys and prosecutors and their staff, and corrections officials. When performed under agreement, which is reflected in a record, costs of the following activities are subject to reimbursement:

(1) The activities, including administration of such activities, specified in § 304.20(b)(2) through (8) and (b)(11);

* * * * *

■ 36. Revise § 304.23 to read as follows:

§ 304.23 Expenditures for which Federal financial participation is not available.

Federal financial participation at the applicable matching rate is not available for:

(a) Activities related to administering titles I, IV-A, IV-B, IV-E, X, XIV, XVI, XIX, XX, or XXI of the Act or 7 U.S.C. Chapter 51.

(b) Purchased support enforcement services which are not secured in accordance with § 304.22.

(c) Construction and major renovations.

(d) Education and training programs and educational services for State and county employees and court personnel except direct cost of short term training provided to IV-D agency staff or

pursuant to §§ 304.20(b)(2)(viii) and 304.21.

(e) Any expenditures which have been reimbursed by fees collected as required by this chapter.

(f) Any costs of those caseworkers described in § 303.20(e) of this chapter.

(g) Any expenditures made to carry out an agreement under § 303.15 of this chapter.

(h) The costs of counsel for indigent defendants in IV-D actions.

(i) The costs of guardians ad litem in IV-D actions.

§ 304.25 [Amended]

- 37. Amend § 304.25 by:
 - a. In paragraph (a), removing the reference “part 74” and adding the reference “part 92” in its place; and
 - b. In paragraph (b), removing “30 days” and adding “45 days” in its place.
- 38. Amend § 304.26 by revising paragraph (a)(1), removing and reserving paragraph (b), and removing paragraph (c) to read as follows:

§ 304.26 Determination of Federal share of collections.

(a) * * *

(1) 75 percent for Puerto Rico, the Virgin Islands, Guam, and American Samoa for the distribution of retained IV-A collections; 55 percent for Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa for the distribution of retained IV-E collections; 70 percent for the District of Columbia for the distribution of retained IV-E collections; and

* * * * *

- 39. Amend § 304.40 by revising paragraph (a)(2) to read as follows:

§ 304.40 Repayment of Federal funds by installments.

(a) * * *

(2) The State has notified the OCSE Regional Office in a record of its intent to make installment repayments. Such notice must be given prior to the time repayment of the total was otherwise due.

* * * * *

PART 305—PROGRAM PERFORMANCE MEASURES, STANDARDS, FINANCIAL INCENTIVES, AND PENALTIES

- 40. The authority for part 305 is revised to read as follows:

Authority: 42 U.S.C. 609(a)(8), 652(a)(4) and (g), 658a, and 1302.

- 41. Amend § 305.35 by:
 - a. In paragraph (d), adding a sentence to the end of the paragraph;
 - b. Redesignating paragraph (e) as paragraph (f); and

- c. Adding paragraph (e).

The revision and addition read as follows:

§ 305.35 Reinvestment.

* * * * *

(d) * * * Non-compliance will result in disallowances of incentive amounts equal to the amount of funds supplanted.

(e) Using the Form OCSE-396A, “Child Support Enforcement Program Expenditure Report,” the State Current Spending Level will be calculated by determining the State Share of Total Expenditures Claimed for all four quarters of the fiscal year minus State Share of IV-D Administrative Expenditures Made Using Funds Received as Incentive Payments for all four quarters of the fiscal year.

(1) The State Share of Expenditures claimed is: Total Expenditures Claimed for the Current Quarter and the Prior Quarter Adjustments minus the Federal Share of Total Expenditures Claimed for the Current Quarter and Prior Quarter Adjustments claimed on the Form OCSE-396A for all four quarter of the fiscal year.

(2) The State Share of IV-D Administrative Expenditures Made Using Funds Received as Incentive Payments is: IV-D Administrative Expenditures Made Using Funds Received as Incentive Payments for the Current Quarter and the Prior Quarter Adjustments minus the Federal Share of IV-D Administrative Expenditures Made Using Funds Received as Incentive Payments for the Current Quarter and Prior Quarter Adjustments claimed on the Form OCSE-396A for all four quarters of the fiscal year.

(3) The Fees for the Use of the Federal Parent Locator Service (FPLS) can be computed by adding the FPLS fees claimed on the Form OCSE-396A for all four quarters of the fiscal year.

* * * * *

- 42. Amend § 305.63 by revising paragraph (d) introductory text to read as follows:

§ 305.63 Standards for determining substantial compliance with IV-D requirements.

* * * * *

(d) With respect to the 75 percent standard in paragraph (c) of this section:

* * * * *

- 43. Amend § 305.64 by revising the second sentence of paragraph (c) to read as follows:

§ 305.64 Audit procedures and State comments.

* * * * *

(c) * * * Within a specified timeframe from the date the report was sent, the IV-D agency may submit comments, which are reflected in a record, on any part of the report which the IV-D agency believes is in error.

* * *

■ 44. Amend § 305.66 by revising paragraph (a) to read as follows:

§ 305.66 Notice, corrective action year, and imposition of penalty.

(a) If a State is found by the Secretary to be subject to a penalty as described in § 305.61, the OCSE will notify the State, in a record, of such finding.

* * * * *

PART 307—COMPUTERIZED SUPPORT ENFORCEMENT SYSTEMS

■ 45. The authority for part 307 continues to read as follows:

Authority: 42 U.S.C. 652 through 658, 664, 666 through 669A, and 1302.

■ 46. Amend § 307.5 by revising paragraph (c)(3) to read as follows:

§ 307.5 Mandatory computerized support enforcement systems.

* * * * *

(c) * * *

(3) The State provides assurance, which is reflected in a record, that steps will be taken to otherwise improve the State's Child Support Enforcement program.

* * * * *

■ 47. Amend § 307.11 by revising paragraph (c)(3) to read as follows:

§ 307.11 Functional requirements for computerized support enforcement systems in operation by October 1, 2000.

* * * * *

(c) * * *

(3) Automatic use of enforcement procedures, including those under section 466(c) of the Act if payments are not timely, and the following procedures:

(i) Identify cases which have been previously identified as involving a noncustodial parent who is a recipient of SSI or concurrent SSI and benefits under title II of the Act, to prevent garnishment of the noncustodial parent's financial account; and

(ii) Return funds to a noncustodial parent, within 2 days after the agency determines that SSI or concurrent SSI and benefits under title II of the Act, in the noncustodial parent's financial account have been incorrectly garnished.

* * * * *

PART 308—ANNUAL STATE SELF-ASSESSMENT REVIEW AND REPORT

■ 48. The authority for part 308 continues to read as follows:

Authority: 42 U.S.C. 654(15)(A) and 1302.

■ 49. Amend § 308.2 by revising paragraphs (b)(2)(ii), (c)(3)(i), and (f)(2)(i) to read as follows:

§ 308.2 Required program compliance criteria.

* * * * *

(b) * * *

(2) * * *

(ii) If location activities are necessary, using all appropriate sources within 75 days pursuant to § 303.3(b)(3) of this chapter. This includes all the following locate sources as appropriate: Custodial parent, Federal and State Parent Locator Services, U.S. Postal Service, State workforce agency, employment data, Department of Motor Vehicles, and credit bureaus;

* * * * *

(c) * * *

(3) * * *

(i) If location activities are necessary, using all appropriate location sources within 75 days pursuant to § 303.3(b)(3) of this chapter. Location sources include: Custodial parent, Federal and State Parent Locator Services, U.S. Postal Service, State workforce agency, Department of Motor Vehicles, and credit bureaus;

* * * * *

(f) * * *

(2) * * *

(i) If location is necessary to conduct a review, using all appropriate location sources within 75 days of opening the case pursuant to § 303.3(b)(3) of this chapter. Location sources include: Custodial parent, Federal and State Parent Locator Services, U.S. Postal Service, State workforce agency, unemployment data, Department of Motor Vehicles, and credit bureaus;

* * * * *

PART 309—TRIBAL CHILD SUPPORT ENFORCEMENT (IV-D) PROGRAM

■ 50. The authority for part 309 is revised to read as follows:

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

■ 51. Amend § 309.85 by revising paragraph (b) to read as follows:

§ 309.85 What records must a Tribe or Tribal organization agree to maintain in a Tribal IV-D plan?

* * * * *

(b) The Tribal IV-D agency will comply with the retention and access requirements at 45 CFR 92.42, including

the requirement that records be retained for at least 3 years.

■ 52. Amend § 309.130 by revising paragraphs (b)(3), (b)(4), (d)(3), and (h) to read as follows:

§ 309.130 How will Tribal IV-D programs be funded and what forms are required?

* * * * *

(b) * * *

(3) SF 425, "Federal Financial Report," to be submitted quarterly within 30 days after the end of each of the first three quarters of the funding period and within 30 days after the end of each of the first three quarters of the liquidation period. The final report for each period is due within 90 days after the end of the fourth quarter of both the funding and the liquidation period; and

(4) Form OCSE-34A, "Quarterly Report of Collections" must be submitted no later than 45 days following the end of each fiscal quarter. No revisions or adjustments of the financial reports submitted for any quarter of the fiscal year will be accepted by OCSE later than December 31, 3 months after the end of the fiscal year.

* * * * *

(d) * * *

(3) The non-federal share of program expenditures must be provided either with cash or with in-kind contributions and must meet the requirements found in 45 CFR 92.24.

* * * * *

(h) *Grant administration requirements.* The provisions of part 92 of this title, establishing uniform administrative requirements and cost principles, shall apply to all grants made to Tribes and Tribal organizations under this part.

■ 53. Amend § 309.145 by revising paragraph (a)(3) introductory text to read as follows:

§ 309.145 What costs are allowable for Tribal IV-D programs carried out under § 309.65(a) of this part?

* * * * *

(a) * * *

(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 part 92. These agreements may include:

* * * * *

■ 54. Amend § 309.160 by revising the first sentence to read as follows:

§ 309.160 How will OCSE determine if Tribal IV-D 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 45 CFR part 92. * * *

* * * * *

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