OCSE-PIQ-80-01

January 24, 1980

Joseph E Steigman
Regional Representative, OCSE
Region II

Deputy Director
Office of Child Support Enforcement

Effective Date of IV-D Program

This is in response to your memorandum dated January 3, 1978, in which you asked about the availability of FFP for IV-D Services provided in July 1975, and the validity of non-AFDC applications made during the same month.

As you know, Public Law 94-46 postponed the implementation date of the IV-D legislation from July 1, 1975 to August 1, 1975. However, Public Law 94-88, Section 266, provides for FFP for "amounts expended in good faith by any State (or by any of its political subdivisions) during July 1975 in employing and compensating staff personnel, leasing office space, purchasing equipment, or implementation of the child support program..."(emphasis added).

The employment and compensation of IV-D staff implies as a necessary consequence the performance of activities by such staff. The House Committee on Ways and Means Report No. 94-386 refers to the amendment enacted under P.L. 94-88 as one that assures "that States which were ready to comply with the provisions of Public Law 93-647 on July 1, 1975, would receive 75 percent Federal financial participation in expenditures made during the month of July". Clearly it was not the intent of Congress to penalize States which implemented a IV-D program on the original effective date of July 1, 1975.

Thus, in answer to your questions, it is proper to allow claims for reimbursement of expenditures for all appropriate IV-D activities performed during July, 1975, both for AFDC and non-AFDC cases. It follows then that applications made for non-AFDC cases during this month make costs incurred in servicing these cases eligible for Federal funding for so long as these cases remain under care.

Louis B. Hays

OCSE-PIQ-80-02

March 13, 1980

Joseph Steigman
Regional Representative, OCSE
Region II

Deputy Director
Office of Child Support Enforcement

Proper Child Support Arrearages to Certify for IRS collection in URESA Related Matters (Your Memorandum, dated September 18,1979)

We regret the delay in responding to your policy inquiry concerning the proper child support arrearage amount to certify for IRS collection when the responding State has modified the initiating State's support order.

We have reviewed the Oregon Attorney General's Opinion #7699 of January 9, 1979, and believe that it is a correct interpretation of the applicable law and facts. An official opinion should be obtained before certifying to IRS any arrearage amount that is based on a court order in an initiating State that was subsequently modified by the responding jurisdiction. Provided an opinion is obtained which in a sense holds that the higher arrearage amount would still be enforceable under the laws of the initiating jurisdiction, that higher amount is properly certifiable to IRS for collection.

As the Oregon opinion points out, in some States the determination of the enforceable arrearage amount can be based solely on the laws of the initiating State. For other States it will be necessary to examine the laws of each responding jurisdiction wherein the issue arises.

The burden of obtaining a formal opinion as to the legal enforceability of the initiating jurisdiction's order belongs to the IV-D agency requesting the certification. Since the issue is a matter of State law, a State Attorney General's opinion is more appropriate than an analysis by the Regional Attorney.

Louis B. Hays

OCSE-PIQ-80-03

May 12, 1980

Wilma J. Hill
Acting Regional Representative
Region III

Deputy Director
Office of Child Support enforcement

Imposition of Non-AFDC Fees In Interstate Cases

This is in reply to your memorandum of October 29, 1979, regarding the charging of fees to non-AFDC interstate cases which are receiving IV-D services.

As you stated, Virginia took an application for non-AFDC services and quite legally under the State plan, charged an application fee under 45 CFR 302.33(b)(1). Virginia is also recovering costs incurred in excess of the application fee for their part in making a collection under 45 CFR 302.33(c). Arkansas, as the reciprocating State in the case you cite, is enforcing the court order, transmitting the collections to Virginia and charging a 10 percent flat rate for this services.

We cannot agree with your concept of double jeopardy. If two States incur costs, than both are entitled to recover them if such recoveries are provided for under their respective State plans. Arkansas, therefore, is also entitled to recover costs of the activities it is performing for this case, up to the amount of the actual costs incurred.

It is, and has been, our position that present regulations permit States to waive the application fee and recover actual costs from collections or charge a flat percentage of the dollar amount of child support collected, provided that the percentage charged does not exceed the actual coats incurred in collection of child support in a given case. The issue, then, is whether or not the 10 percent deduction exceeds Arkansas' actual costs in this case, a matter you might wish to explore through the Regional representative in Region VI.

We would also suggest the possibility of filing an application for IV-D services directly with Arkansas, which does not charge an application fee. If such an application were accepted, and collections sent directly to her, she would then avoid payment of costs to Virginia.

Louis B. Hays

OCSE-PIQ-80-04

July 17, 1980

TO : OCSE Regional Representatives

FROM : Deputy Director
Office of Child Support Enforcement

SUBJECT: Standard Indirect Cost Rates - State and Local Governments.

By memorandum dated October 15, 1979, I forwarded to each of you an interpretation from the Office of Grant and Contract Financial Management (OGCFM) regarding the proper application of the standard indirect cost rate (10% of the direct labor cost in providing the service, excluding overtime, shift or holiday premiums and fringe benefits as authorized by 45 CFR 74, Appendix C, paragraph G.2.a. At that time I asked that you not provide any formal guidance to your States based on that interpretation since it contained statements which appeared somewhat confusing. We have since received further clarification from OGCFM, the salient points of which are as follows:

1. The standard indirect cost rate can be used by a subgrantee only in the absence of actual allowable indirect costs. When actual indirect costs are available, and/or the IV-D Agency has negotiated an actual indirect cost rate with the subgrantee, the standard rate may not be used.

2. The use of a standard indirect cost rate applies only when the agency providing the service is an operating agency of the State or local government. Costs of agencies which are central service agencies must either be direct billed to the user agency or be allocated by means of a cost allocation plan.

3. The standard rate can only be used when the service is provided by one agency to another agency of the <u>same</u> level of government.

a. It cannot be used between a State agency and a County agency (e.g. a local welfare department) or between a State or County agency and a private organization.

b. It can be used between a County Department of Welfare and a County Attorney's Office or District Attorney's Office provided that the Attorney's Office is part of the County government, it has not developed or negotiated an actual

indirect rate and the Attorney's Office is not treated as a central service function.

4. The existence of a cooperative or purchase of service agreement has no affect on the proper rate to be used.

In reviewing the use of the standard rate in your Region you should keep in mind that the standard rate is not subject to adjustments if it was properly used at the time it was applied. For instance, if actual indirect costs for the current year are determined to be less than 10% of direct labor, the standard rate used in a prior year cannot be adjusted retroactively if such actual data were not available at the time the standard rate was being used. In addition, you should also keep in mind that for those situations where the standard rate was used improperly, e.g. between a County agency and a State agency, any adjustments must be based on the actual indirect cost rate for each year, not just the current year.

The foregoing, in conjunction with the original OGCFM memorandum, should provide adequate clarification of the use of the standard indirect rate and should be shared with your States. It is obviously not the preferred method for claiming indirect costs but is valuable in those appropriate situations where the cost of capturing and accumulating actual indirect costs is excessive and therefore, unwarranted.

If you have any further questions, please contact Tom DePippo at 443-2910.

Louis B. Hays

OCSE-PIQ-80-05

Date: September 24, 1980

Charles H. Post
Regional Representative

Deputy Director
Office of Child Support Enforcement

Court Appointed Counsel for Indigent Defendants in Paternity Actions

This is in response to your inquiry of April 4, 1980 requesting a Policy statement of the availability of FFP for court appointed defense counsel. Please accept my apology for the delay in responding.

Federal financial participation is not available to the States to pay for court appointed counsel for indirect defendants in paternity actions. The costs of paternity defense counsel are not responsible or necessary costs of a State's Child Support Enforcement program. The main purposes of the Child Support Enforcement program are paternity establishment and enforcement of child support obligations. Every aspect of the program is designed to facilitate those proceeding. The employment of attorneys for defendants who contact these claims is clearly antithetical to any purpose of function of the IV-D program, and is not accomplished under
45 CFR 304.20.

45 C.F.R. 304.21, providing for Federal financial participation in the costs of cooperation agreements with courts and law enforcement officials does not encompass compensation for defense Attorneys. "Law-enforcement officials" explicitly "...means district attorneys and prosecutors and their staff." It could be a serious conflict of interest for the IV-D agency, with Federal matching funds, to employ both prosecutors and defense counsel in a paternity motion.

The Office of Child Support Enforcement endorses the accurate identification of fathers of illegitimate children in accordance with principles of equity and due process of law. Several States, by statute or judicial discretion, have determined that the assistance of counsel should be provided for indigent paternity defendants who seriously question their liability or need advice concerning their rights and obligations. However, assuring adequate representation of indigents is not a responsibility of the IV-D program, but rather, a matter of concern for the courts and State and local governments.

Louis B Hays

OCSE-PIQ-80-06

October 9, 1980

Mr. Bernard Stumbras
Administrator
Division of Economic Assistance
P.O. Box 8913
18 S. Thornton Avenue
Madison, Wisconsin 53708

Dear Mr. Stumbras:

On May 19, 1980, you wrote Ms. Kathy Rama, Program Analyst, Health Care Financing Administration, regarding several questions you had on the final regulations for medical support enforcement. We are responding to your question on the need to hire separate staff to handle medical support enforcement activities. Please accept my apology for the delay in responding.

OCSE regulations at 45 CFR 306.40 require a State IV-D agency entering into a cooperative agreement with a State Medicaid agency to insure that as a result of its efforts under the agreement there will be no decrease in Child Support Enforcement program activities, staff and resources below the level allocated for the quarter beginning April 1, 1980. Under this requirement, a State IV-D agency may not reduce its staff or resources below the level specified in the regulations for any reason associated with the performance of medical support enforcement activities.

Your memo indicates that there is not enough potential medical support enforcement activity in some county child support agencies (CSAs) to justify a single part-time position. In such cases, it may be possible for existing child support staff to take on minimal medical support enforcement activities, if it can be shown through program review and audit that there is no adverse impact on the child support level of effort. For example, there is no decrease in the number of cases handled in a given period, or conversely, no increase in case processing time.

The Office of Child Support Enforcement plans to monitor medical support enforcement activities to insure that the maintenance of effort requirement is met. Also, we will continue to conduct our annual compliance audit of each State's Child Support Enforcement program. Diversion of staff to medical support enforcement activities, could affect a State's performance under the audit.

Please feel free to address any inquiries regarding the OCSE regulations on medical support enforcement to this office.

Sincerely yours,

Louis B. Hays
Deputy Director
Office of Child Support
Enforcement

OCSE-PIQ-80-07

DATE: October 16, 1980

TO: Joseph Steirman
Regional Representative
Region II

FROM: Deputy Director
Office of Child Support Enforcement

SUBJECT: Non-AFDC Fee Schedule

This is in reply to your memorandum of December 17, 1979, regarding non-AFDC application fees under 45 CFR 302.33. I regret the delay in replying.

Current regulations at 45 CFR 302.33(b)(2) specify that if a fee schedule is used by a State to determine non-AFDC application fees they must be such that they do not discourage application for child support services by those most in need of them.

This language and its purpose are very clear, the fee schedule must be designed so that applying for non-AFDC services does not place a substantial burden on individuals at the lower end of the economic scale. Any fee schedule with a minimum fee of more than $20 is clearly suspect. Before such a fee schedule can be approved, the State must clearly show that it schedule does not prevent people from applying for the services.

The maximum fee on a State's fee schedule can be in excess of $20.00. To be approvable, the maximum application fee must bear a reasonable relationship to the fixed costs attributable to establishing a new case and taking routine enforcement actions. The intent of the statute and regulations is that the major, variable costs be recovered by deductions from the amounts collected. On the basis of the information provided we concur with you approval of the Virgin Islands' fee schedule.

Louis B. Hays

OCSE-PIQ-80-08

November 7, 1980

Joseph E. Steigman
OCSE Regional Representative
Region II

Deputy Director
Office of Child support Enforcement

Policy Determination with Regard to disability Benefits

This is in response to your memorandum, dated December 17, 1979 concerning the status of disability benefits when considering the availability of income for child support. I regret the delay in replying.

Benefits paid under this II of Social Security should be pursued for child support where necessary. Disability benefits should be treated as income for IV-D purposes. In determining the absent parent's ability to pay child support, the Social Security disability benefit as well as the extent of other Income should be considered.

Under Section 462(f)(2) of the Social Security Act, payments under the insurance system established by Title II of the Act are garnishable. Disability benefits are included under this Title. Social Security benefits are not grants or part of a means-tested income support program but an earned right based on remuneration for employment. The only Title II benefit of an absent parent excluded from garnishment are payments as compensation for death.

For your information, a dependent child's benefit is payable to the caretaker relative in many instances where the absent parent is entitled to benefits under Title II of the Social Security Act. although income from a child's Social Security benefit cannot be used to satisfy a support obligation. However the application for this benefit and its receipt by the proper caretaker relative should be speedily pursued since there are restrictions on retroactive payments.

if you have any further questions please contact Maury Huguley at 443-5350.

Louis B. Hays

OCSE-PIQ-80-09

DATE: November 7, 1980

TO: Wilma Hill
OCSE Regional Representative
Region III

FROM; Deputy Director
Office of Child Support Enforcement

SUBJECT: Applicability of 45 CFR 302.10 to the District of Columbia (DC-79-PC)

This is in response to your memorandum dated September 11, 1980 and addendum there to dated September 12, 1980 in which you request clarification regarding the applicability of 45 CFR 302.10(c)(2) to the District of Columbia.

We have reviewed 45 CFR 302.10 and the interim audit report (DC-79-PC) and agree that the provision regarding the performance of regularly planned examinations and evaluations of operations in local offices (45 CFR 302.10(c)(2)) does not apply to the District of Columbia. States that have central staff only(e.g. the District of Columbia and Guam), are not required by OCSE regulation to conduct examinations and evaluations because these States do not have local offices. In addition, current OCSE regulations do not require the States to examine and evaluate IV-D activities performed under cooperative agreements.

The interim audit report (DC-79-PC) recommends that the District of Columbia schedule regular planned examinations and evaluations of internal Office of Paternity and Child Support Enforcement operations as well as those activities performed under cooperative agreements. We agree with this recommendation which is based on findings in the interim audit report. However, we would like to make it clean that this recommendation does not involve a compliance issue. the commendation made in the interim audit report will help the Office of Paternity and Child Support enforcement to insure that IV-D functions are carried out properly, efficiently and effectively.

Louis B. Hays

OCSE-PIQ-81-01

Date: JAN 19 1981

To: Wilma J. Hill
OCSE Regional Representative
Region III

From: Deputy Director
Office of Child Support Enforcement

Subj: Pennsylvania Interim Audit Report No. PA 78-PC-Payment of FPLS Fees

This is in response to your memorandum dated April 2, 1980, concerning the issue as to whether or not the Pennsylvania State IV-D agency is required to collect the $5.00 fee from individuals who request FPLS-only Services. Please accept my apology for the delay in responding.

In your Position Statement, you argue that, under the requirements of 45 CFR 302.35(e), the fee for FPLS services applies only when these services are provided at the request of "the resident parent, legal guardian, attorney, or agent of a child," and not when an agency or court, as specified in 302.35(e)(1) and (2), requests the services. You conclude that, in Pennsylvania, "since the Domestic Relations Sections (of the County Courts of Common Pleas), rather than individual clients, request FPLS services, no fee is required by 45 CFR 302.35(e).. ."

In the final analysis, however, when an agency or court requests use of the FPLS on behalf of a non-AFDC client, it is the client, and not the agency or court, who is the recipient of the service. This places the non-AFDC client whose FPLS-only service request is initially handled by an agency or a court in the same situation with respect to the fee as the parent, guardian, attorney, or agent of a child who makes a request for FPLS-only services directly through a State PLS. Therefore, the $5.00 fee for using the FPLS must be charged in all non-AFDC FPLS-only cases, regardless of whether the request for these services is actually made by an agency or court on behalf of the non-AFDC client.

Louis B. Hays

OCSE-PIQ-81-02

27 JAN 1981

Joseph E. Steigman
Regional Representative

Deputy Director
Office of Child Support Enforcement

Fee for Service in Sheriff's Agreements

This is in response to your memorandum dated December 19, 1980 concerning a fee-for-service agreement between the New Jersey State IV-D agency and the Essex county sheriff's office. The specific issue you raise is whether a fee-for-service arrangement is subject to the same prior approval by the Regional Office as a part-time arrangement for service of process.

You are correct in assuming that the fee-for-service arrangement, like a full-time arrangement for service of process, does not require Regional approval. The rationale for prior approval of part-time arrangements, as you note, is to provide a safeguard against inappropriate use of Federal funds under the agreement. Because of the relatively small potential for misuse of funds under a fee-for-service arrangement, I agree that Regional approval of the arrangement is unnecessary.

Louis B. Hays

OCSE-PIQ-81-03

Date: February 25, 1981

TO : Regional Representatives
Office of Child Support Enforcement

From: Acting Director
Office of Child Support Enforcement

Subject: Use of the State Parent Locator Service

This memorandum is in response to several requests our office has received asking for a policy statement on use of State Parent Locator Services (SPLS) for purposes other than the location of absent parents to establish paternity or secure support. The issue arises when under State legislation or regulation the SPLS is required to perform functions not authorized by title IV-D of the Social Security Act. While use of the SPLS for non-IV-D purposes is not specifically prohibited by Federal statute or regulations, several problems exist.

First, it must be clearly understood that any such use cannot be approved under a IV-D State plan and, therefore, must not be claimed as an expense for FFP under such a plan. Any expense so incurred must be paid for by the State. Where the SPLS is a direct part of the State IV-D agency, rather than under purchase of service or cooperative agreement, its use for purposes other than IV-D violates the "separate" aspect of the Single and Separate Organizational Unit Requirement.

Public Law 96-611, effective July 1, 1981, will allow the States at their option to enter into agreements with the Department to obtain information from the FPLS for the purpose of enforcement or determination of child custody and in cases of parental kidnapping of a child.

The State must not attempt to obtain information from the FPLS for any reasons other than location of an absent parent for IV-D purposes, or, as of July 1, 1981, to locate a parent or child for the purpose of enforcement or determination of child custody and cases of parental kidnapping of a child, if the State has entered into an agreement with the Department. The SPLS must also safeguard any information it may have or may obtain in the future concerning applicants or recipients of Child Support Enforcement services, as prescribed by 45 CFR 302.18.

Louis B. Hays

OCSE-PIQ-81-04

March 18, 1981

Distribution of Child Support to Reimburse the AFDC Grant

Date: 18 MAR 1981

From: Hugh Galligan
OCSE Acting Regional Representative
Region I

To: Acting Director
Office of Child Support Enforcement

Subj: Distribution of Child Support to Reimburse the AFDC Grant

This is in response to your memorandum dated January 23, 1981 in which you request our interpretation regarding the distribution of child support to reimburse the mother's share of the AFDC grant.

Rhode Island's use of child support to reimburse the entire AFDC grant including the mother's share of the assistance payment is consistent with Federal law and regulations. Sections 454(5) and 457 of the Social Security Act and implementing regulations at 45 CFR 302.52 and 302.51 clearly indicate that any amount collected which represents payment on the current month's support obligation is to be used to determine the family's continued eligibility for AFDC and to reimburse the entire assistance payment made to the family. Those statutory and regulatory provisions also indicate that any amount collected in excess of the current month;'s support obligation is to be used to reimburse any past assistance payments made to the family for which the State has not been reimbursed.

Louis B. Hays

OCSE-PIQ-81-05
3 APR 1981

Charles H. Post
OCSE Regional Representative
Region IV

Acting Director
Office of Child Support Enforcement

Fees Received by Courts under South Carolina State Law for Collecting Child Support Payments

This is in response to your memorandum dated December 10, 1980 concerning whether or not the fees collected by the Clerks of Court under South Carolina State law should be considered a reimbursement of the costs of the Clerks of Court under cooperative agreement with the State IV-D agency. Please accept my apology for the delay in responding.

The South Carolina Code of Laws (Chapter 21, Article 1, Section 14-21-140) provides that "in actions for support for the spouse or dependent children, when paid through the court and not directly, the court shall assess costs against the party required to pay such support in the amount of three percent thereof, which costs shall be in addition to the support money paid." From a reading of the law, it is apparent that these fees, in fact, serve to reimburse the costs incurred by the courts in making the collection. Consequently, the fees so collected meet the definition of program income contained in 45 CFR 74.41(a) and should reduce the State's claim for expenditures incurred under the IV-D program.

Even though these fees may not be directly available to meet the cost of operating the Clerk of Court's office, this restriction does not dilute the fact that the fees represent an offset to IV-D expenditures when collected in regard to a IV-D case. The amount received still represents income to the State of South Carolina from activities whose costs are subject to Federal reimbursement. Should the State wish to deal with the problem of the inaccessibility of the fees to individual Clerks of Court, provision can be made in its cooperative agreements to allow for some type of adjustment in the reimbursement or incentive payments being provided under the program. That, however, is a matter for the State to consider.

In summary, while the fee collected under South Carolina law is not one which is required by the Social Security Act, it does represent an offset to expenditures declared by the State under the IV-D program and must be deducted from these expenditures before they are claimed for FFP.

Louis B. Hays

OCSE-PIQ-81-06
04/03/92

Jesse R. Beck, Director
Office of Child Support Recovery
Georgia Department of Human Resources
618 Ponce De Leon Avenue, N.E.
Atlanta, Georgia 30308

Dear Mr. Beck:

This is in response to your letter of February 16, 1981, in which you inquire about Federal policy with respect to intrastate incentives under the amended Section 458 of the Social Security Act. Please accept my apology for the delay in responding. Your specific concern is with situations in which both the State and the political subdivision perform certain program functions and where there is therefore some question as to which party is entitled to incentives on assigned collections.

In your letter,you describe three types of circumstances with respect to the eligibility of political subdivisions for incentive payments. The first situation is that of the twenty-three judicial circuits presently under agreement which receive incentives on all cases. As you describe it, the district attorneys in these circuits are paid by the State. However, these district attorneys are locally elected officials. They secure county funding from the counties in their respective circuits and hire their own IV-D staff these employees, turn, are considered local employees and are paid out of local funds. The district attorney in each of the twenty three circuits carries out the entire IV-D program in his respective circuit. The judicial circuit therefore receives incentives on all collections. Assuming that a judicial circuit constitutes a political subdivision under State law, the payment of incentives on all collections to these judicial circuits would be a proper application of Federal policy under Section 458 of the social Security Act and 45 CFR 302.52, because, first, the district attorney is a locally elected official of what the State defines as a political subdivision, and, second, this political subdivision, through the district attorney and his staff, both enforces and collects assigned child support obligations.

The second type of situation you describe is at the other extreme of the spectrum of State and local configurations with respect to incentive payments. In one judicial circuit in Georgia, you state that under the cooperative agreement between the State and the district attorney, the State pays the salary and travel expenses of an assistant district attorney. The sole function of this attorney is to file court actions and provide other legal assistance to the State staff who perform all other IV-D functions in the circuit. Under this arrangement, the judicial circuit and the counties within the circuit contribute nothing towards the financing of the program, nor does the subdivision receive any

incentive payments. Instead, the State retains all incentives, as permitted by Section 307 of P.L. 96-272.

Assuming that the minimal activity performed by the office of the district attorney is insufficient to qualify the judicial circuit for incentives, this appears to be a proper application of Federal policy under Section 458 of the Act and 45 CFR 302.52, because in this case it is the State which carries out the collection and enforcement functions within the judicial circuit.

The third type of situation you present does not now exist in Georgia but, as you note, may arise in judicial circuits which come under agreements with the State IV-D agency in the future. In this hypothetical situation, the State and local judicial circuit would both have some functional responsibilities for the enforcement and collection of child support obligations within the district. Because this configuration falls somewhere between the two extremes which exist under your arrangements with the twenty- for judicial circuits presently under agreement, the eligibility for incentives is not as clear as it is in the other two situations.

As a solution to the ambiguity presented by this third type of configuration, you propose that eligibility for incentives in these situations "be based proportionately on the percentage of contribution, by the local jurisdiction and the State, of the 25% [non-Federal share] of IV-D costs in the particular jurisdiction." In your letter you ask whether your proposal runs counter to any Federal requirements. We believe that the extent to which incentives are shared between a State and a political subdivision must be related to the extent to which the State and the political subdivision share responsibility for IV-D program activities. Nevertheless, there are no existing Federal requirements which would preclude a political subdivision from contracting away its right to incentives in exchange for the non-Federal Share of IV-D program costs.

I hope this response sufficiently answers your questions about the applicability of Federal incentives policy to the circumstances you describe in Georgia. We understand you will submit specific proposals for implementing any initiative involving pro-rating of incentives between the State and a political subdivision to the OCSE Regional Office for approval.

Thank you for your continued interest in improving the Child Support Enforcement program.

Sincerely yours,

Louis B. Hays
Acting Director
Office of Child Support Enforcement

cc: Charles H. Post

OCSE-PIQ-81-07

15 MAY 1981

Charles H. Post
OCSE Regional Representative
Region IV

Deputy Director
Office of Child Support Enforcement

Treatment of Child Support Payments Once the Child is Removed from the AFDC Grant

This is in response to your memorandum dated March 9, 1981 regarding the treatment of child support payments made to the IV-D agency with respect to a child who has been removed from the AFDC grant by the caretaker relative. Your question and our response is as follows:

Q. If the caretaker relative removes the child from the AFDC grant and child support has been collected, can the State retain more than the child's share of the grant during the interim months?

A. The redetermination process and distribution procedure described in 45 CFR 302.32(b) do not apply to child support payments made on behalf of a child removed from the AFDC grant by the caretaker relative. The amount received by the IV-D agency as payment on the current month's support obligation, in this instance, is not causing the family to be ineligible for continued assistance. Rather, because of an action on the part of the caretaker relative, a child is being removed from the grant. When the child is no longer included in the grant, the assignment of support rights with respect to that child is terminated and the child support received on its behalf is to be paid to the family. Therefore, your reference to "interim months" (as discussed in 45 CFR

302.32(e))
is not appropriate since that situation does not exist.

In the example you cite, assuming the family remains eligible for AFDC, the State must retain the $100 payment made by the absent parent in each of the months of December, January and February in order to reimburse itself for the assistance payments made to the family under (see 302.32(c)). During these months, the child's needs were considered in determining the amount of the AFDC grant to be paid to the family. Effective March 1, however, payments made on the $100 monthly support obligation must be paid to the family since the child is no longer included in the grant.

Your memorandum indicates that the Legal Services Corporation of Alabama has questioned the State's interim collections distribution procedure. We believe that the above response adequately addresses the matter given the fact that the "interim" procedure is not applicable. You further indicate that in light of King v. Smith and other judicial and regulatory decisions, there is a question regarding the State's authority to retain any payment made by an absent parent on his or her monthly support obligation to reimburse the entire assistance payment made to the family.

With regard to the latter question, Alabama's use of child support to reimburse the entire AFDC grant is consistent with Federal law and regulations. Sections 454(5) and 457 of the Social Security Act and implementing regulations at 45 CFR 302.32 and 302.51 clearly indicate that any amount collected which represents payment on the current month's support obligation is to be used to determine the family's continued eligibility for AFDC and to reimburse the entire assistance payment made to the family.

As you know, the King v. Smith Supreme Court decision (392 U.S. 309) was rendered long before the August 1, 1975 effective date of the statutory and regulatory provisions of our program. Nevertheless, we have reviewed the decision and believe that it does not affect the distribution of child support collections under title IV-D of the Act.

OCSE is not aware of any judicial decision that would prohibit Alabama from distributing child support collections as required by the statute and the implementing regulations. In addition, it is our understanding that the regulatory decisions referred to in your memorandum implement title IV-A and also do not affect distribution. It is clear, however, that the caretaker relative has the right at any time to remove a child from the AFDC grant and to be paid any current month's support received by the State on behalf of such child.

Louis B. Hays

OCSE-PIQ-81-08
5/26/81

Wilma Hill
OCSE Regional Representative
Region III

Deputy Director
Office of Child Support Enforcement

Draft letter to Pennsylvania Regarding Malpractice Insurance for Prosecuting Attorneys

This is in response to your memorandum of January 14, 1981 requesting a review of your draft letter to Pennsylvania regarding malpractice insurance for prosecuting attorneys. I apologize for the delay in responding.

As you indicated in your draft, although Maine V. Thiboutot establishes that an individual can sue a State official for damages under 42 U.S.C. 1983, it is also noted in that opinion that individual defendants can claim immunity when they act in good faith. This is the basis for our current policy that malpractice insurance is not a reimbursable expense. The case of Imbler v. Pachtman held that prosecuting attorneys acting in the scope of their duties in initiating and pursuing a criminal prosecution are absolutely immune from civil suit for damages under section 1983. This would certainly provide immunity for prosecutors in all criminal non-support actions and might also apply to other statutorily mandated duties. This case has less relevance to our position, however, since it addresses only criminal actions.

Although your proposed letter accurately reflects OCSE's policy on this issue, I would suggest that you place more emphasis on the Maine v. Thiboutot case and less on Imbler v. Pachtman in presenting the basis for the policy.

Louis B. Hays

OCSE-PIQ-81-09

06/10/81

Acting Deputy Director
Office of Child Support Enforcement

Treatment of Voluntary Child Support Payments Under Title IV-D

Regional Representatives
Office of Child Support Enforcement

As you know, the issue of voluntary child support payments has been one of lingering concern to the States in their operation of the Child Support Enforcement program. While States should not have accepted voluntary arrangements to pay child support after the effective date of title IV-D and, in any case, should have converted all voluntaries to legally enforceable and binding agreements by January 1, 1977 (in accordance with 45 CFR 302.50(a)(3)), we are still confronted with the practical necessity of handling child support payments made on a voluntary basis.

In this memorandum we are addressing voluntary child support payments which are made to a State on behalf of AFDC recipients who have executed a valid assignment in accordance with 45 CFR 232.11. If a voluntary child support payment is made to a State agency other than the IV-D agency (or agency operating pursuant to a cooperative or purchase of service agreement), the payment must be directed to the IV-D agency in accordance with 45 CFR 233.20(a)(3)(v)and 302.32(a).

Please note that this memorandum does not apply to child support payments which are collected by a State pursuant to a written or oral agreement which is enforceable by the IV-D agency under State law (e.g., State contract law). When an enforceable agreement exists, the amount specified in the agreement as the current month's support obligation must be used in following the procedures for distribution found in 45 CFR 232.20, 302.32, 302.51 and 302.52, except that the procedure contained in §302.51(b)(3) would not apply.

Case Situations

For purposes of distribution, three types of cases in which a State would be confronted with a voluntary child support payment are described below. The method of distributing these collections follows.

Case 1

A voluntary child support payment is made pursuant to a written or oral agreement which is not legally binding on, or enforceable against, the payor. The agreement specifies a

support amount and the frequency of payment.

Case 2

Same as Case 1, except that no amount or no frequency of payment is specified in the agreement.

Case 3

A voluntary child support payment is made in the absence of an agreement of any kind.

Distribution

As noted above, we are assuming that the payments made in the three case situations are covered by an assignment under 45 CFR 232.11. They must therefore be paid to the IV-D agency. Like any payment received on behalf of an AFDC recipient for whom an assignment is in effect, voluntary payments must be reported to the IV-A agency for redetermination of eligibility as required by 45 CFR 302.32(b).

For purposes of distributing these payments, a current month's support obligation must be identified. In Case 1, the agreement specifies the obligation. In Cases 2 and 3, however, because the amount of the obligation is not specified, the total amount of support that is received in a given month should be considered the amount of the obligation for that month.

In Cases 1, that is , where an obligation amount is identifiable, the voluntary support payment must be distributed like any other collection of assigned support in accordance with 45 CFR 302.51, provided the family remains eligible for continued assistance. In this case, the payment on the current month's obligation is used to reimburse the current month's assistance payment, as required by §302.51(b)(2), while any amount received in excess of the current month's support obligation is distributed according to the requirements of §302.51(b)(4) and (5). If, on the other hand, the family in Case 1 is rendered ineligible by the payment on the current month's support obligation, the procedures of 45 CFR 302.32 apply. As provided at §302.32(d), amounts received in excess of the current month's obligation must be distributed in accordance with 45 CFR 302.51(b)(4) and (5).

A somewhat different procedure applies in Cases 2 and 3. In both of these cases, the amount received in a given month is counted as the current month's support obligation, as noted above. If the family continues to be eligible for assistance, this amount, by definition, must be less than the assistance payment for that month. Thus, this voluntary payment must be distributed in accordance with 45 CFR 302.51(b)(2).

In some situations, the family in Case 2 or Case 3 may be rendered ineligible for continued assistance, as determined by the State IV-A agency pursuant to 45 CFR 232.20, because the payment received exceeds the assistance payment. Because the entire amount received during the month in these cases is considered to be the monthly support obligation, the payment received satisfies the current month's obligation only. Thus, if the family in either of these cases becomes ineligible for continued assistance because of the payment received, the entire amount of the payment must be paid to the family, as required by 45 CFR 302.32(b).

There may be some confusion in relating statutory language to the regulation because of the absence of a "required support obligation." When we recodify our distribution regulations, we will attempt to clarify the related regulatory provisions. In the interim, since the statute makes provision for the distribution of child support payments received in these situations, distribution must be accomplished as prescribed above.

Incentives

Section 458 of the Act states that incentives shall be paid when collection and enforcement take place with regard to child support payments received. The State or political subdivision may be eligible for incentives in any of the three cases situations discussed above if the following conditions are met.

The regulatory provisions of 45 CFR 302.52 and the policy statements contained in OCSE-AT-76-22 (with attachments) prescribe procedures for distributing incentives to political subdivisions and the standards used to determine whether a political subdivision is eligible for incentive payments. Political subdivisions are eligible for incentives with respect to collections made under voluntary arrangements if these standards are met and the subdivision stands ready to convert voluntary payment arrangements into legally enforceable support orders in the event of default on the voluntary arrangement or for other reasons. As prescribed in the standards, where it does not routinely perform all enforcement and collection activity, the political subdivision will be eligible for incentives in those cases in which it takes action to secure compliance by an absent parent with a voluntary arrangement, but not in cases in which no such action is taken.

Section 307 of P.L. 96-272, enacted June 17, 1980, revised Section 458 of the Act to permit each State to receive incentives for collections it makes on its own behalf. Interim procedures governing these intrastate incentives to States are provided in OCSE-AT-80-13, dated August 28, 1980. A Notice of Proposed Rule-making to implement these new incentives provisions was published by OCSE on May 8, 1981 (46 FR 25660).

As with any other assigned child support collection, a State is eligible for incentives on voluntary payments in intrastate cases whenever there is no political subdivision eligible for incentives in these cases. In summary, then, in any of the three cases described in this memorandum, the States can reimburse themselves for the current assistance payment they have granted, provided the family remains eligible for assistance. Further, either the State or its political subdivisions is entitled to incentives on voluntary payments subject to the conditions specified above.

Marshall Mandell

OCSE-PIQ-81-10

JUN 18, 1981

Acting Deputy Director
Office of Child Support Enforcement

Supplementary Compensation for Child Support Collections

Charles H. Post
Regional representative
Region IV

This is in response to your memorandum dated May 29, 1981 concerning a State system of compensation which includes a bonus to workers for child support collections over a specified prior period. The question posed is whether or not such a bonus could be considered a reimbursable salary cost and therefore subject to FFP.

Such a bonus is allowable as salary cost under OMB Circular No. A-87 as "supplementary compensation" and is eligible for FFP. Also we agree that the extra employee compensation should be based on increased incentives rater that on "gross" AFDC collections. We would add a Word of caution, however, that such bonus systems could lead to abusive practices by staff attempting to achieve added compensation. any bonus system, therefore, should have built-in safeguards to prevent abuses.

Marshall S. Mandell

OCSE-PIQ-81-11

07/10/81

Acting Deputy Director
Office of Child Support Enforcement

Questions Related to Implementing Medical Support Enforcement Programs

Regional Representatives
Office of Child Support Enforcement

The Health Care Financing Administration and the Office of Child Support Enforcement have been holding a series of workshops on implementing agreements between State IV-D agencies and Medicaid agencies as provided in Section 11 of P.L. 95-142. Workshop participants have raised a number of questions that require clarification by OCSE. The questions and OCSE's position on each are listed below.

1. When is a written cooperative agreement between a IV-D agency and a Medicaid agency required?

A written cooperative agreement between a IV-D agency and a Medicaid agency is required whenever the two agencies are undertaking an ongoing relationship that includes the IV-D agency providing the services listed at 45 CFR 306.10. However, the IV-D agency may, for example, provide location information (such as a computer generated listing of addresses on absent parents) on a one-time only basis in the absence of a written cooperative agreement. This one-time exchange would allow the Medicaid agency to contact the absent parent population to determine the general availability of health insurance. If coverage is significant, the two agencies may then proceed to develop an appropriate written agreement to cover future operations. The cost of this one-time exchange may be absorbed by the IV-D agency if it is insignificant and places no additional burden on the agency staff.

2. Who pays for the establishment of paternity for "medical only" case?

As one of the functions which may be performed under cooperative agreement with a Medicaid agency, 45 CFR 306.10 provides that the IV-D agency establish paternity if necessary. The need to establish the paternity of a child who is not otherwise receiving IV-D services, but is eligible for Medicaid due to high medical expenses, should arise in only a small number of cases. Our policy with respect to these cases is that if paternity is being established at the request of the Medicaid agency for the purpose of eventually securing medical support on behalf of the child, then the cost of establishing paternity for this case is to be charged to the Medicaid agency under the cooperative agreement.

Reimbursement under the IV-D program for the establishment of paternity is only available if performed on behalf of a IV-D case.

3. What medical support enforcement costs may be paid under the IV-D program?

No costs related to medical support enforcement may be paid under the IV-D program. Federal regulation at 45 CFR 306.30 require that "the IV-D agency will receive full reimbursement from the Medicaid agency for all medical support enforcement activities performed under the agreement." There may, however, be minimal costs similar to those described under question one that may be absorbed by the IV-D agency.

4. Must a State's cost allocation plan reflect a Medicaid share in the costs of establishing paternity for AFDC cases?

The establishment of paternity for AFDC cases is a function the IV-D agency must perform in its effort to secure child support from absent parents to reimburse the State for public assistance. As a necessary and proper IV-D function, its costs would not be shared by the Medicaid program under the State's cost allocation plan.

We will provide further guidance in this area as other significant questions arise.

Marshall S. Mandell

cc: Doris Soderberg
Director
Medicaid Medicare Management Institute, HCFA

OCSE-PIQ-81-12

7/27/81

Acting Deputy Director
Office of Child Support Enforcement

Contracting Arrangement for Private Attorneys: Shelby County, Tennessee

Charles H Post
OCSE Regional Representative
Region IV

This is in response to your memorandum dated April 28, 1981 in which you request our concurrence in your position regarding the proposed contracting arrangement for the Shelby County IV-D Program. Please accept my apology for the delay in responding.

We have reviewed your letter to Commissioner Puett and the proposed contracts you submitted, and cannot support your approval of the contracting arrangement for the Shelby County IV-D program. Specifically, we question the authority of the county Attorney to hire private attorneys to represent the State of Tennessee. We also question the proposed arrangement which calls for the private attorney to transfer to the County IV-D agency (Juvenile Court) 25 percent of the reimbursement he or she receives under the contract with the County Attorney in order to satisfy the State share requirement.

Your letter to Commissioner Puett indicates that the proposed contracting arrangement will authorize the county Attorney to act of behalf of the Attorney General in contracting with private attorneys to perform paternity services for the County IV-D agency. the proposed contract between the State Department of Human Service, Shelby County and the County Attorney at section XII, paragraph 2 states:

> "...the County Attorney of Shelby County shall have the authority under the provisions of Section 8-6-105 of the Tennessee Code Annotated, the provisions of the Contract for Purchases of Child Support Services, which is hereby incorporated into this contract by specific reference,....to assist the State of Tennessee as counsel for the establishment of parental relationships through either legitimation or paternity proceeding. The County attorney shall here the authority to hire personnel necessary to fulfill his obligations under this contract."

We have reviewed Section 8-8-100 of the Tennessee Code Annotated and believe that it authorizes the Governor to employ the County Attorney to represent the State of Tennessee as legal counsel. However, that statutory provision does not appear to allow the Governor to extend to the county Attorney the authority to hire

legal counsel to represent the State of Tennessee.

In addition, we could find no legal basis in the contract between the Governor and County Attorney for the statement in the contract that the County Attorney has the authority to hire personnel necessary to fulfill his obligations under the contract. Although we are not in a position to make a definitive interpretation of State law, the material you asked us to review does not appear to authorize the County Attorney to enter into contractual arrangements with private attorneys to perform paternity services for the State of Tennessee. We strongly suggest that the Tennessee Department of Human Services secure an opinion from the State's Attorney General as to whether Section 8-6-105 of Tennessee law allows for the County Attorney to act on behalf of the Attorney General in employing additional counsel.

Your memorandum to commissioner Puett also contains a clause which the State will add to the proposed contract between the County Attorney and the private attorneys, the second paragraph of which states:

> "Pursuant to Federal Regulations at 45 CFR 304.30 (a)(2), the attorney agrees, while acting as representative of the County Attorney, to transfer 25% of such fees to the County IV-D agency for use under its administrative control."

The Federal regulation at 45 CFR 304.30(a)(2)specifies when public funds available to the IV-D agency for its Child Support Enforcement program may be used as the State's Share in claiming FFP. It specifically refers to funds transferred to the IV-D agency from another public agency as a possible source of the State's share. The regulation does not permit a 25 percent refund to the IV-D agency of funds previously reimbursed a private contractor for services rendered to represent the State's share of those reimbursed funds. Our basis for this position is summarized below.

We do not believe that private attorneys under contract with the County Attorney should be considered public officials, as you suggest, when acting on behalf of the County Attorney. If it is determined that the employment of addition counsel by the County Attorney is allowed under State law, the private attorneys so employed merely represent the County (and, in effect, the caretaker relative), via contract, in child support proceedings before the court. We have reviewed 45 CFR 304.30 and the material you submitted and discussed this issue at great length with Bruce Gaunt of your staff. There appears to be no basis in State law or regulations or any justification in your submitted materials for treating these private attorneys as public officials. Therefore, funds transferred by a private attorney, under contract with the

County Attorney, to the IV-D agency are derived from private rather than public sources. These funds may not be considered the State's share under 45 CFR 304.30.

We are available to discuss this matter further if you feel it is necessary.

Marshall S.Mandell

OCSE-PIQ-81-13

08/04/81

Marshall Mandell
Acting Deputy Director
Office of Child Support Enforcement

Eligibility for FFP - Inclusion of Deputy Sheriff in the Unit Cost Rate Computation in South Carolina

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

This is in response to your memorandum of July 9, 1981 regarding FFP for services provided by a Deputy Sheriff assigned to a Clerk of Court to serve process and papers make arrests, and locate absent parents.

As provided in 45 CFR 304.21(b)(1), FFP is not available for the cost of service of process unless the court or law enforcement agency would normally be required to pay such costs. FFP is available, however, to cover costs for arrests, made by a Deputy Sheriff, as defined in OCSE-AT-79-3. These costs are covered only if the Clerk of Court enters into a purchase of service agreement with the Sheriff's Department as provided in 45 CFR 304.22. Under OCSE-AT-79-3, purchase of service agreements to obtain arrest services are not subject to prior approval by the Regional Representative if the individuals who perform these activities devote 100 percent of their time to IV-D arrest activities. However, purchase of service agreements must have prior approval by the Regional Representative when the Deputy Sheriff assigned to the Clerk of Court does not spend 100 percent of his time on IV-D arrest activities. Approval of this agreement is granted by the Regional Representative for one year's operation. Continued operation under the agreement in later years is also subject to prior approval. In granting prior approval of the purchase of service agreement, the AT further requires the Regional Representative to evaluate any unit cost charge for allowable expenditures incurred under the purchase of service agreement. Provided the Deputy Sheriff does not spend 100 percent of his time on IV-D arrest activities, records must be maintained to show the allocation of time between IV-D and non-IV-D activities.

With respect to locating absent parents, 45 CFR 304.21 would allow for FFP to be available in the costs related to Deputy Sheriff functions necessary to locate an absent parent.

In order to facilitate our responding t your policy questions in the future, I ask that you adhere to the format prescribed in a memorandum to Regional Representatives from Louis D. Hays dated November 4, 1980.

OCSE-PIQ-81-14
08/04/81

Edward M. Yampolsky
Administrative Law Judge
Social Security Administration
Office of Hearings and Appeals
900 Washington Square Building
100 West Michigan Avenue
Lansing, Michigan 48233

Dear Mr. Yampolsky:

This is in response to your letter to Secretary Schweiker and Acting Commissioner Doggette, dated March 20 1981, which was forwarded to me for response. The subject of your letter is the use of title IV-D funds to secure child support payment from fathers on public assistance in Michigan. Please accept my apology for the delay in responding.

In your letter you cite two sources for the view that otherwise legally liable non-custodial parents in Michigan who are on public assistance do not have an obligation to pay child support. First, you note that the Michigan Supreme Court has ruled in Sword v. Sword that absent parents on public assistance have no "present ability to pay" child support. Second, you note that disability benefits under title II of the Social Security Act and supplemental security income (SSI) payment under title XVI of the Act are not subject to assignment under Sections 267 and 163(d)(1) of the Act, respectively.

As a point of clarification, I think it is essential to stress that the assignment of child support required of AFDC applicants or recipients under Section 402(a)(26)(A) of the Act covers the AFDC child's right to support. If the child is the child of an AFDC applicant of recipient who is beneficiary of title II disability payments, these benefits cannot be assigned under the specific prohibition of Section 297 of the Act. If the child is an SSI recipient, the child is by definition not a recipient of AFDC and the assignment provision of Section 402(a)(26)(A) is not relevant. In neither case, however, does the prohibition against assignment of title II and SSI benefits itself affect the responsibility of the absent parent who is a recipient of these benefits to pay child support in accordance with a legally established support obligation.

Based on the facts you submitted it appears that, in some situations, courts in Michigan may have enforced child support obligation in violation of the Michigan Supreme Court's decision in the Sword case. For a definitive ruling in this regard, of course, we defer to the State courts. In response to your inquiry, however, we intend to contact the Michigan IV-D agency to attempt to resolve this issue.

Sincerely yours,

Marshall S. Mandell
Acting Deputy Director
Office of Child Support
Enforcement

OCSE-PIQ-81-15

8/14/81

Acting Deputy Director
Office of Child Support Enforcement

Distribution of Child Support Payments Once the Family Ceases to Receive AFDC

Arlus R. Johnston
Regional Representative
Officer of Child Support Enforcement

This is in response to your memorandum dated July 17, 1981 regarding the distribution of child support payments once the family ceases to receive AFDC, but continues to receive IV-D services.

You ask several questions on page 3 of the memorandum regarding the distributor of child support payments for the first five months following the family's ineligibility for AFDC. The Social Security Act at Section 457(c)(1) and the implementing regulation at 45 CFR 3025.1(e)(1) permit the State to continue to collect current support payments from the absent parent for a period not to exceed the first five months following the family's ineligibility for AFDC, and pay all such amounts to the family. In addition, amounts collected during this period which represent payment on prior month's support obligations must be used to reimburse past assistance payments with any excess paid to the family (see Section 457(c) of the Act and 45 CFR 302.51(f)). Finally, 45 CFR 302.51(f)(4) requires that States which elect to continue to collect child support payments for the five month period give priority to collecting current support payments. There is, therefore, no question that collections made during this period must first be applied to the current month's support obligation before applying amounts received against past due support.

You indicate on page 1 of your memorandum that if a State retains part of the collection received in a month when an absent parent, because of not paying current support in a timely fashion, pays more that one month's current support payment in that month, you believe the State would be treating such payments in a manner which is inconsistent with Section 457(c) of the Act. We agree with this contention and cite the following example. Let us assume a monthly support obligation of $100 with the absent parent owing an arrearage of $400 which accrued while the family was receiving AFDC. The family becomes ineligible for AFDC in March and a payment of $100 is received in that month and paid to the family. No payment is received in April, but the IV-D agency receives two separate payments of $100 each in May. The $200 received in May should be treated as the monthly support payment for April and the monthly support payment for May. The State

must pay the entire $200 to the family. This is consistent with 45 CFR 302.51(e)(1).

In your memorandum on page 3, you ask about the distribution of child support collections subsequent to the five month period for these individuals who authorize the IV-D agency to continue to collect support payments on their behalf. Section 457(c)(2) of the Act and 45 CFR 302.51(c)(2) provide that at the end of the five month period following a family's ineligibility for AFDC, if the State is authorized to do so by the individual on whose behalf the collection will be made, continue to collect current support payments from the absent parent. The State must pay all such amounts collected to the family after deducting any costs incurred in making the collection from the amount of any recovery made. An authorization made to the State under these provisions does not constitute an application for IV-D services under 45 CFR 302.33 Therefore, the provision of 45 CFR 302.51(f) must be followed with regard to the collection of past due support since the family had been receiving AFDC.

You also indicate in your memorandum that it seems to be inconsistent to permit a State to determine which arrearages the State will satisfy first when past due support is collected and the recipient has filed an application for IV-D services under 45 CFR 302.33, and not give the State the same discretion with respect to determining which arrearage to satisfy first when past due support is collected during the five month period following the family's ineligibility for AFDC. Section 457(c) of the Act and 45 CFR 302.51(f) provide that if a State elects to continue to provide collection services during the five month period following the family's ineligibility for AFDC it is to retain amounts collected on prior month support obligations in order to reimburse assistance payments that have not yet been reimbursed with any excess paid to the family. However, if an individual applies for IV-D services pursuant to Section 454(6) of the Act and 45 CFR 302.33, the statute and regulations are silent regarding the disposition of collections made. Because the statue does not specifically prescribe a distribution pattern to follow with respect to past due collections for these cases, the State has the flexibility and discretion to determine how distribution will be accomplished. Nonetheless, pursuant to 45 CFR 302.51(f), the State continues to have an obligation to collect unpaid support for the period of time during which the family received AFDC.

Marshall S. Mandell

OCSE-PIQ-81-16
SEP 21, 1981

Peter E. Walsh, Director
State of Maine
Department of Human Services
Augusta, Maine 04333

Dear Mr. Walsh:

This is in response to your letter of August 25, 1981 in which you requested information about the use of the Federal Parent Locator Service (FPLS) in connection with parental kidnapping and child custody cases.

When a State enters into an agreement pursuant to 42 U.S.C. 606 for the use of the Federal PLS in parental kidnapping and child custody cases, the State receives authorization to accept and forward requests made by any of the authorized person specified in the statute. "Authorized person" means (1) any agent or attorney of a State with an agreement who has the authority under State law to enforce custody determinations, (2) any court having jurisdiction to make or enforce custody determinations, and (3) any agent or attorney of the United States or of State with an agreement, who has the duty or authority to act with respect to the unlawful restraint of a child. The of the statute does not specify any provision for limitation of the "persons" authorized to use the Parent Locator Service. You should obtain the service of your State Attorney General to determine whether the State has any inherent power to restrict the individuals or entities listed in the law from the use of the service.

With respect to use of the Federal PLS in the specific situation you described in your letter, we believe that the language "making" or enforcing a child custody determination" may permit use in cases in which the parents have fled with a child prior to the State child welfare agency petitioning the court for protective custody. This use of the Federal PLS may be appropriate because it involves the "making" of a custody determination. In some cases, an agent or attorney of the state may be authorized to obtain information at this point based upon the investigation or prosecution of an unlawful taking or restraint of a child. This may depend upon the state of the criminal pro at the time when the parents flee with the child. Once the State files a petition for protective custody and the court involved obtains jurisdiction to make a custody determination, the court or its agent would be authorized to request location information from the Federal PLS. Again, we advise contacting your State Attorney General, because State laws vary considerably and may effect (1) how custody cases are treated and (2) the point at which it is determined that an investigation or prosecution of a crime is initiated.

Please let me know if I can be of further assistance to you.

OCSE-PIQ-81-17
10-02-81

Acting Deputy Director
Office of Child Support Enforcement

Request for Policy Interpretation (Your Memorandum of September 8, 1981)

Arlus W. Johnston
Regional Representative
Office of Child Support Enforcement

This is in response to your memorandum regarding several issues that have arisen in Region VI related to IV-A/IV-D interface.

You indicate on page 1 of your memorandum that OFA Region VI staff have interpreted 45 CFR 235.70 as limiting the scope of information that the IV-A agency is required to refer to the IV-D agency. This interpretation appears to be inconsistent with the language of the regulation and it's intent. We support the position taken by your office that the IV-A agency must provide all relevant information prescribed by the IV-D agency and that the costs of providing this information must be borne by the IV-A agency. However, since 45 CFR 235.70 is within the purview of IV-A we believe that an official interpretation should be provided by the Office of Family Assistance. Attachment 3 of your memorandum is a copy of a request for policy interpretation regarding this subject submitted by the Dallas OFA Regional Commissioner to the Associate Commissioner for Family Assistance. We have contacted OFA regarding this memorandum and were informed that they are in the process of developing a response. Please let us know if you have any problems with the OFA interpretation.

You also indicate that OFA Regional Staff have raised several questions regarding what information the IV-A agency should share with the IV-D agency, subsequent to the initial referral, when there are changes in the AFDC case. We believe that inherent in 45 CFR 235.70 is the need for IV-A to supply to IV-D any revisions to the information contained in the initial referral as the need arises. We, therefore, support your position in regard to this issue as well. However, this is another matter that needs to be addressed by OFA. Since your attachment 3 does not address this issue, we recommend that you ask the OFA Regional Office to submit this issue to their Central Office for an interpretation.

Lastly, you indicate that OFA Regional Financial Management staff are advocating to the States in Region VI that they implement the benefiting program concept. They have apparently taken the position that if an action is not required for IV-A eligibility purposes, the costs of that action should be charged to the

benefiting program despite the fact that the statute and regulations require that the action be taken by the IV-A agency and that IV-D regulations would prohibit FFP for the action. Again, we agree with the position you have taken regarding this issue. While your attachment 3 does address this issue, we understand that the OFA Regional Office has submitted a separate interpretation request regarding the benefiting program concept. OFA has informed us that they are preparing a response to that request as well.

Marshall S. Mandell

OCSE-PIQ-81-18
11-12-92

Deputy Director
Office of Child Support Enforcement

Request for Policy Interpretation - Evaluation of Local Offices

Max W. Smith
OCSE Regional Representative
Region VII

This is in response to you memorandum dated October 16, 1981 in which you request an interpretation of the requirement in 45 CFR 305.21 regarding the assignment of staff to conduct regularly planned examinations and evaluations of local offices.

OCSE regulations at 45 CFR 302.10(c)(2) require the State IV-D agency to use regularly assigned State staff to conduct routine examinations and evaluations of IV-D operations in local offices. The regulation provides the State with maximum flexibility regarding the assignment of State IV-D agency staff to perform these functions. The corresponding audit regulation at 45 305.21(c) requires the State to assign State level staff to perform regularly planned examinations and evaluations of local office operations. We believe that the reference to "State level staff" in this provision refers to any staff of the State IV-D agency without placing a restriction on who is capable of performing the tasks. Thus, the State may assign outstationed State Iv-D agency personnel to perform these functions.

The regulation also does not prohibit a State IV-D agency employee from being assigned to supervise the operation and perform the evaluations and examinations of one or more area offices. However, we do not endorse this type of approach due to the possible lack of independence and objectivity needed to perform a truly effective assessment.

Fred Schutzman

OCSE-PIQ-81-19
12-04-81

Deputy Director
Office of Child Support Enforcement

Request for Policy Interpretation of IV-D Related Fraud

Kay Willmoth
Regional Representative, Region V

This is in response to your memorandum dated November 4, 1981 to Daniel Fascione in which you request a policy statement on IV-D related fraud.

Federal financial participation (FFP) is available at the 75 percent rate for the investigation and prosecution of IV-D related fraud OCSE policy regarding what constitutes IV-D relates fraud is prescribed in PIQ #76C-5, dated April 23, 1976, a copy of which was attached to your memorandum. FFP is not available under title IV-D for any fraud related activities that fall outside of the scope of the limitations prescribed in the PIQ.

Current IV-A policy (SSA-AT-78-8(OFA)), dated March 16, 1978 (copy attached) provides that FFP is available at the 50 percent rate for preliminary investigation and pre-prosecution activities and testimony related to fraud. However, IV-A policy does not provide FFP for the actual prosecution of IV-A fraud. We are concerned that this prohibition may result in an increase in claims for FFP for the prosecution of fraud. The States therefore, should be encouraged to closely monitor claims for FFP from law enforcement officials, particularly where the latter are involved in both IV-A and IV-D activities.

Except for the except from the sample Minnesota cooperative agreement, the State's policy regarding IV-D related fraud prescribed in each of the documents attached to your memorandum appears to be consistent with OCSE policy. The excerpt does not indicate that Mr. Bot's office performs any IV-D function other than IV-D related fraud activities. In accordance with PIQ #75C-5, FFP is not available to an agency or individual who performs IV-D related fraud activities under a cooperative agreement unless the agreement provides for the performance of other IV-D functions as well. In addition, the excerpt does not indicate that FFP for IV-D related fraud is limited to the investigation and prosecution of fraud discovered during the establishment and enforcement of support obligations. The cooperative agreement must include this limitation in order to accurately reflect the limitation in the availability of reimbursement under the IV-D program.

I hope these comments are help in resolving the audit issue.

Fred Schutzman

OCSE-PIQ-81-20

12-16-81

Honorable Larry Pressler
United States Senator
Box 1372
Sioux Falls, South Dakota 57101-1372

Dear Senator Pressler:

I am responding to your request of November 20, 1981 to Mr. Daniel Fascione for comments on the problems of implementing the new Federal regulations the would permit access to the Federal Parent Locator Service (PLS) in child custody and parental kidnapping cases, and our perceptions on where we now stand with providing an effective avenue of support for victims of parental kidnapping.

As you know, the Parental Kidnapping Prevention Act of 1980 (Sections 6 to 10 of P.L. 96-611) provides that States have the option of entering in of entering into an agreement with the Secretary of Health and Human Services to use the Federal PLS in child custody and parental kidnapping cases. Although the Act has an effective date of July 1, 1981, statutory provisions prohibit implementation until regulations are in effect. These regulations were published in the Federal Register on November 3, 1981 along with the agreement that must be signed by the Governor of the State and the Director of the Office of Child Support Enforcement (OCSE). A copy of these documents is enclosed for your ready reference.

OCSE recognizes the need for quick action in child custody and parental kidnapping cases and is expediting the implementation of the new regulations. Toward that end, we have issued program instructions (copy enclosed) to assist States in submitting the required agreement and have assured them of our immediate cooperation. Once the required agreement is signed by both parties, a State may begin to request information from the Federal PLS through existing State contact points.

We believe that the role of the Federal PLS in parental kidnapping and child custody cases is a rather narrow one. As prescribed by law, the Federal PLS is available for requests for address information from legally authorized persons via the States. Theses persons include any agent or attorney of any State having an agreement with the OCSE, who has the duty or authority under State law to enforce a child custody determination; any court or any agent of the court having jurisdiction to make or enforce a child custody determination; and any agent or attorney of the United State, or of a State having an agreement, who has the duty or authority to investigate, enforce, or bring a prosecution with respect to the unlawful taking or restraint of a child. However, the States may

not accept requests by parents and their attorneys for transmittal to the Federal PLS since they are not authorized Page - 2

individuals under the statute.

As an effective tool in locating abducted children, the Federal PLS is limited for the following reasons. the Federal PLS involves a computer search that uses social security numbers as a principal tool for locating address information. Using social security numbers, the Federal PLS searches Federal records for home addresses and employer addresses. Federal sources of information are the Social Security Administration, Veterans Administration, Department of Defense, the Internal Revenue Services, the Immigration and Naturalization Service, the National Personnel Records Center of the General Services Administration, and the Department of Transportation for Coast Guard information. Unfortunately, if a parent falsifies his or her identity and is successful in obtaining a new social security number,the Federal PLS will be unable to locate the missing parent. Furthermore, address information obtained from the Social Security Administration may not reflect an individual's most current address. This is due to a legislated change in the wage reporting requirements by employers from a quarterly to an annual basis. Only in cases of persons working for the Federal government, serving in the armed forces, or drawing Federal benefits, does the Federal PLS produce reasonably quick and effective results.

Because of these limits, we concur with the policy stated in the document "Interstate and International Child Custody Disputes" that a parent not rely solely on the Federal PLS, nor should law enforcement authorities delay or abandon their investigations because of the Federal PLS. Although we hope that the Federal PLS may be of some help in aiding victims of parental kidnapping, it can offer assistance only within the boundaries described above.

For additional information regarding ways to locate missing children, we recommend contacting the American Bar Association for a copy of their document "Interstate and International Child Custody Disputes."

I hope this information will be helpful to you.

Sincerely yours,

Fred Schutzman
Deputy Director
Office of Child Support
Enforcement

OCSE-PIQ-82-01
03-12-92

Deputy Director
Office of Child Support Enforcement

Child Support Obligations Not Discharged in Bankruptcy

Regional Representatives
Office of Child Support Enforcement

As you are aware, Section 2334 of Public Law 97-35, which was effective August 13, 1981, amended section 456 of the Social Security Act and Section 523(a)(5)(A) of Title 11, United State Code to prohibit the discharge in bankruptcy of any child support obligations assigned to the State. On September 14, 1981, we issued an action transmittal (OCSE-AT-81-20) regarding these statutory changes.

Attached for your information is a recent court decision holding that these statutory changes apply to cases filed prior to the effective date of the law, Judge Bobier of the Federal Bankruptcy Court, Eastern District of Michigan, Southern Division, ruled that "before rendering a decision on discharge, a bankruptcy judge must apply the law that exists at the time of the decision, and not at the time of filing." This ruling allows for the collection of support owed that potentially could be discharged in cases filed earlier, but not concluded until after August 13, 1981. For example, in one particular Michigan County, this ruling represents an estimated recovery of over $100,000 in AFDC arrearages.

Please share this decision with the States in your Region.

Fred Schutzman

Attachment

OCSE-PIQ-82-02

Date: March 16, 1982
Deputy Director
From: Office of Child Support Enforcement

Subject: Requirement to Keep 100 Percent Time Reports for Full Time IV-D Employees

To: Charles H. Post
OCSE Regional Representative
Region IV

This is in response to your memorandum dated February 22, 1982 regarding the maintenance of time distribution records for employees who spend 100 percent of their time on IV-D activities.

We concur with your position regarding the type of time records the State must maintain for IV-D staff that spend all of their time on IV-D activities. As you may know, Section B(10)(b) of Attachment B of OMB Circular A-87 requires all amounts charged to Federal grant programs for personal services to be supported by time and attendance, or equivalent records, for each employee. In addition, if employee salaries and wages are chargeable to more than one Federal grant program or other cost objective, the circular requires such charges to be supported by appropriate time distribution records.

Therefore, Mississippi does not have to keep time distribution records on the IV-D employees covered by Commissioner Roark's memorandum of August 14, 1981 because these employees are required to spend 100 percent of their time on IV-D activities. Hence, only time and attendance, or equivalent records, are required for these employees.

Since it was uncovered during a recent audit (MS-80-PC) that some employees assigned to work full time in the IV-D program were found to be spending part of their time performing non-IV-D activities while their salaries were fully charged to the IV-D program, it would be wise to monitor the situation closely to ensure that this situation does not continue in the future.

Fred Schutzman

OCSE-PIQ-82-03

March 18, 1982

Mr. Bernard Stumbras
Division of Economic Assistance
18 South Thornton Avenue
P.O. Box 8913
Madison WI 53708

This is in response to your letter of February 24, 1982 concerning the distribution of support collected by Federal tax refund offset.

First, it should be understood that a State may request IRS collection via Federal tax offset of the full amount of an assigned support arrearage, as long as the arrearage is $150 or more and is at least three months old. At the time of the request, the relationship between the amount of support owed under an established obligation and the amount of unreimbursed AFDC is not relevant. Once the IRS completes an offset and the State receives the collection, however, this relationship must be considered before distribution of the collection is effected.

The legislative provision that controls distribution of collections made by Federal tax refund offset is found in section 464(a) of the Social Security Act as amended by P.L. 97-35, the Omnibus Budget Reconciliation Act of 1981. It says in part that amounts of past-due support shall be withheld from tax refunds by the IRS and paid "to the State agency . . . for distribution in accordance with section 457(b)(3)." Section 457(b)(3) in turn states that amounts collected as child support shall be "(A) retained by the State (with appropriate reimbursement of the Federal Government to the extent of its participation in the financing) as reimbursement for any past assistance payments made to the family for which the State has not been reimbursed or (B) if no assistance payments have been made by the State which have not been repaid, such amounts shall be paid to the family." Therefore, for collections made under the Federal tax refund offset process, the State may retain amounts up to the total assigned support arrearage or the total unreimbursed AFDC, whichever is less. If collections are received which exceed the total unreimbursed AFDC but not the total assigned support arrearage, then the excess must be paid to the AFDC family. If collections are received which exceed the total assigned support arrearage, whether or not there is still unreimbursed AFDC, the excess must be paid to the taxpayer.

OCSE regulations at 45 CFR 303.72(h), published in the Federal Register on February 19, 1982, also make reference to the

distribution procedures. We have recently discovered, however, that paragraph (h) should have cited distribution regulations at

45 CFR 302.5 1(b)(5) as well as at (b)(4) in order to provide complete instructions concerning the relevant distribution process as required by the statute. We plan to correct this oversight when this regulation is finalized in response to public comments on the interim final rule.

I hope these comments are helpful to you.

Sincerely yours,

Fred Schutzman
Deputy Director
Office of Child Support
Enforcement

OCSE-PIQ-82-04

April 12, 1982

From: Office of Child Support Enforcement

Subj: OCSE Policy Regarding Enforcement of URESA Delinquencies

Joseph E. Steigman
OCSE Regional Representative
Region II

This is in response to your memorandum of February 18, 1982 to Daniel Fascione
concerning the responsibility of a State to monitor IV-D URESA cases referred by
another State and to take enforcement action when delinquencies occur.

We agree with Mr. Wiggins' position that New Jersey's policy of monitoring and enforcing all court orders within its jurisdiction is consistent with IV-D statute and regulations. As you know, section 454(9) of the Act and the implementing regulation at 45 CFR 302.36 require each State to cooperate with any other State in: a) establishing paternity, if necessary; b) locating an absent parent residing in the State against whom action is being taken by the IV-D agency in another State; c) securing compliance by an absent parent residing in the State with an order issued by a court against such parent for the support of child(ren) receiving AFDC in another State; and d) carrying out other functions required under an approved IV-D State plan. We believe these requirements dictate consistent treatment of all IV-D cases, regardless of whether the case originated in the State or was referred from another State. Thus, Arkansas must give URESA cases referred by other States the same treatment that it gives its own IV-D cases.

With respect to Arkansas' position that it will not monitor IV-D URESA cases referred by another State or take enforcement action unless notified of a delinquency, the Dallas Regional Office should be able to provide the assistance needed to ensure that Arkansas' treatment of all IV-D cases is consistent.

l hope these comments are helpful to you.

Fred Schutzman

cc: Arlus Johnston
OCSE Regional Representative
Region V

OCSE-PIQ-82-05

May 12, 1982

From: Deputy Director
Office of Support Enforcement

Subj: Request for Policy Interpretation -- Definition of Applicant's Income for Use in Determining Non-AFDC Fees

Kay Willmoth
To OCSE Regional Representative
Region V

This is in response to your memorandum to Daniel Fascione dated February 4, 1982 in which you ask whether 45 CFR 302.33(b)(2) prohibits the IV-D agency from considering income other than the applicant's when determining the non-AFDC application fee. Please accept my apology for the delay in responding.

Indiana's proposed definition of the term "applicant's income" is inconsistent with our regulations. OCSE regulations at 45 CFR 302.33(b)(2) indicate that a fee schedule developed by the IV-D agency must be based on each applicant's income and must be designed so as not to discourage the application for services by those most in need of them. The proposed definition includes the income of household members other than the applicant -- some or all of which may not be available for use by the applicant and the consideration of which might discourage the applicant from seeking non-AFDC services.

The intent of 45 CFR 302.33(b)(2) is that only the applicant's income should be considered in determining the fee to be charged for non-AFDC services. Household income may be considered to the extent the applicant has a vested indisputable right to determine how it will be expended. According to the facts presented, that does not appear to be the case in Indiana.

I hope these comments are helpful to you in dealing with Indiana's proposal.

Fred Schutzman

OCSE-PIQ-82-06
Jun 7, 1982

Deputy Director
Office of Child Support Enforcement

Iowa Request for Waiver of Distribution Regulations

Max W. Smith
OCSE Regional Representative, Region VII

This is in response to your memorandum dated May 12, 1982 regarding Iowa's request for a limited waiver of the distribution requirements with respect to collections made by a private collection agency to satisfy arrearages. As we have discussed, neither title IV-D of the Social Security Act nor the implementing regulations provide for a waiver.

To assist you in your discussions with the State, we have outlined the proper distribution of child support in the cases presented in your memorandum as follows. Please note that the questions have been renumbered.

1. Current AFDC cases where treatment of collections as payment on the required support obligation would render the family ineligible for AFDC and require payment of the collection to the family.

   As you know, OCSE regulations at 45 CFR 302.51(a) clearly indicate that any child support collected in a month must first be treated as payment on the required support obligation for that month. The regulations further require at 45 CFR 302.32(b) that the State IV-D agency must inform the agency administering the State IV-A plan of the amount of the payment on the required support obligation no later than 30 days after the end of the month in which the collection is made. The State IV-A agency must use this amount to redetermine the family's eligibility for AFDC. If the IV-A agency determines that any portion of the current support payment is sufficient to make the family ineligible, the regulations at 45 CFR 302.32(b) require to IV-D agency to pay to the family the full amount of the current support payment which was collected and used to determine the family's ineligibility for an assistance payment. this is to be paid to the family in the month the IV-A agency determines the family to be ineligible to receive an assistance payment.

2. Non-AFDC cases where a family ceases to receive AFDC payments and the State continues to collect under the State plan.

When the State continues to collect current support payments from the absent parent for a period not to exceed the first five months following the family's ineligibility for AFDC, the State must pay all such amounts to the family. In addition, amounts collected during this period which represent payment on prior months' support obligations must be used to reimburse past assistance payments with any excess paid to the family (see 45 CFR 302.51(f)). States that elect to continue to collect child support payments for the five month period must give priority to collecting current support payments (see 45 CFR 302.51(f)(4)).

OCSE regulations at 45 CFR 302.51(e)(2) provide that, at the end of the five month period following the family's ineligibility for AFDC, the State may, if it is authorized to do so by the individual on whose behalf the collection will be made, continue to collect current support payments from the absent parent. the State must pay all such amounts collected to the family after deducting any costs incurred in making the collection from the amount of any recovery made. An individual's authorization under these provisions does not constitute an application for IV-D services under 45 CFR 302.33, therefore, these cases are treated as former AFDC cases and the provisions of 45 CFR 302.51(f) as stated above must be followed with regard to the collection of past due support.

3. Non-AFDC cases where applicant was previously a recipient of AFDC.

If an individual applies for IV-D services under 45 CFR 302.33, the regulations are silent regarding the disposition of collections made. However, OCSE policy requires any child support collected on behalf of an individual receiving IV-D services under 45 CFR 302.33 to be considered first as payment on the current support obligation. This amount must be paid to the family. Because the regulations and OCSE policy do not specify a distribution pattern To follow with respect to past due collections for these cases, the State has the flexibility and discretion to determine how distribution will be accomplished. Nonetheless, pursuant to 45 CFR 302.51(f) the State continues to have an obligation to collect unpaid support for the period of time during which the family received AFDC.

In summary, we cannot accommodate Iowa's request for a waiver of the distribution requirements because title IV-D of the Act and OCSE regulations do not provide for a waiver. Child support collected in the cases presented in your memorandum must be distributed as described above.

For your information, there is currently a bill (A.R. 4717) pending congressional conference action which would essentially reinstate the recovery of costs option that States had available

prior to P.L. 97-35 with respect to non-AFDC cases where the individual has applied for IV-D services. We expect this bill to be enacted in the near future. If it is enacted, States will be able to deduct collection agency fee from collections made on behalf of individuals who have applied for IV-D services.

I hope these comments will be helpful to you in responding to the State of Iowa.

Fred Schutzman

OCSE-PIQ-82-07
Date: June 21, 1982

From: Deputy Director
Office of Child Support Enforcement

Subject: Procedures for Obtaining Access to Indian Trust Funds
Subject to 25 U.S.C.

To: Max Smith
OCSE Regional Representative
Region VII

In follow-up to Gary B. Harbaugh's attached letter, l wrote the Assistant Secretary for Indian Affairs, Department of the Interior, to request a blanket waiver of 25 U.S.C. 410 to allow access to Indian trust funds to meet court-ordered child support obligations. As you know, under section 410 only the Secretary of the Interior can approve access to trust funds for payment of any debt or claim against Indians.

l received a reply to our request from Theodore Krenzke, Director, Office of Indian Services, Bureau of Indian Affairs (BIA). (See attached.) Mr. Krenzke believes that a blanket waiver of section 410 would have little effect on child support collections from Indian parents because the lands in question have been subdivided through heirship and current income-producing land holdings of individuals of child bearing age are very small. He does, however, support exceptions to section 410 on a case-by-case basis.

We contacted the BIA regarding the procedure for applying for individual case waivers. According to BIA, each Indian tribe is considered a quasi-sovereign nation with its own judicial system, the tribal court. Although some tribal courts require compliance with title IV-D, many others have failed to adopt or enforce child support enforcement provisions on their reservations. For those tribes that have child support provisions, the State or local IV-D agency may petition the tribal court to secure support payments for Indian children. If the absent parent is entitled to trust funds which are subject to section 410, the tribal court may apply to BIA for a waiver to allow access to any income derived from that entitlement to meet the monthly support and/or arrearage payments.

l have attached for your use a list of Indian tribal courts. You may wish to disseminate this list to State and local IV-D agencies that handle support cases involving Indian children.

Fred Schutzman

Attachments

Tab A - Background Information
Tab B - List of Indian tribal courts
cc: Regional Representatives
Regions l - X
Mr. Gary B. Harbaugh

OCSE-PIQ-82-08
10-04-82

Deputy Director
Office of Child Support Enforcement

California Legal Issues Impacting on Child Support Program

Mr. Richard Lewis
OCSE Regional Representative
Region IX

Attached is OGC's response to my August 12 memorandum asking under what circumstances OGC would become involved in State litigation at the State's request. I agree with Bob Keith's suggestion that we provide the State with a letter expressing policy considerations which the State could then use as an evidentiary document in the cases in question.

The amicus curiae approach would be extremely time consuming and risky since there is no guarantee that the General Counsel of HHS or the Department of Justice would approve amicus participation. Bob's alternative would accomplish our goal of presenting OCSE's position in these cases to the court.

If you agree with this approach, let me know when you think letters on the cases you highlighted would be ready for my review prior to being sent under your signature. If you disagree, let me know what your concerns are and an alternative approach to handling this situation.

Fred Schutzman

cc: Regional Representative
Regions I - X

Robert E. Keith

OCSE-PIQ-82-09
Date: October 18, 1982

From: Deputy Director
Office of Child Support Enforcement

Subject: Incentive Payments on Collections Made through IRS Tax Refund Offset Procedures

To: Ruthie Jackson
OCSE Regional Representative
Region X

This is in response to your memorandum dated September l, 1982 regarding the availability of incentive payments on support collections made via the Federal tax refund offset process. We have also reviewed the background material you provided in the form of Donald Sutcliffe's memorandum to the Associate Commissioner for Family Assistance dated August 12, 1982.

It is our position that incentive payments are available to States and political subdivisions for collections made via the Federal tax refund offset process. This position is consistent with title IV-D statute and regulations. Section 458 of the Social Security Act and the implementing regulations at 45 CFR 303.52 provide for the payment of an incentive equal to 15 percent of amounts which are collected by a State or political subdivision and retained by the State to reimburse assistance payments under the AFDC program. To qualify for an incentive, the State or political subdivision must also have taken some action to enforce the obligation. The statute and regulations further provide that the incentive payment must be paid from the Federal share of amounts collected. A State or political subdivision which collects past-due support via the Federal tax refund offset process meets all of the incentive payment eligibility requirements discussed above. We base this on the following.

First, section 464(a) of the Act and the implementing regulation at 45 CFR 303.72 limit the availability of the Federal tax refund offset process to past-due support that is assigned to the State under 45 CFR 232.11. Secondly, the State that requests collection from Federal tax refunds engages both in enforcement and collection activity, because the State uses the IRS as an enforcement tool, receives the amount offset for

past-due support and distributes it pursuant to OCSE regulations. The process is comparable to a State contracting with a private collection agency to perform services on its behalf. Incentives may be paid for collections which result from the tax offset process in the same manner as they are paid for collections made by a private collection agency or for those resulting from using any other enforcement technique.

In developing our policy regarding the availability of incentive payments for collections made via the Federal tax refund offset process, we looked into the possibility of splitting the incentives paid for these collections between the State and the Federal government. The Office of General Counsel, however, has taken the position that the Federal government cannot receive incentives under current law. Therefore, we cannot agree with Mr. Sutcliffe's recommendation that the incentives paid for collections made through the tax refund offset process be split between the State and the Federal government. Under §303.72, the State IV-D agency submits all requests for offset and receives and distributes all collections made as a result of offset. If the program is State administered, the State is entitled to the entire 15 percent incentive because it performs the enforcement and collection activity on its own behalf. If the program is locally administered, the political subdivision is responsible for enforcement and collection activity except for the State level activities discussed above. Thus, in a locally administered program, both the State and political subdivision engage in enforcement and collection activities with respect to cases referred to the IRS for offset.

Under normal circumstances, in a State where the program is locally administered, there is no involvement by the State in collecting and enforcing a support obligation and, therefore, no entitlement by the State to an incentive payment. Because of the necessary State involvement in both the collection and enforcement aspects of the Federal tax offset process, it is appropriate for the State and political subdivision to share the incentive payments based on each jurisdiction's contribution in a given offset case. The State may not retain the entire incentive if it has a locally administered program because section 458(b) of the Act requires the allocation of incentives among all jurisdictions that participate in the enforcement and collection of support in a manner to be prescribed by

the Secretary. The term "jurisdiction" as used above includes only the State and the political subdivision because these are the entities eligible for incentive payments under section 458 of the Act and OCSE regulations at §303.52. Please note that your reference to 45 CFR 305.30 is no longer appropriate because that regulation was deleted by the final rule on incentive payments published in the Federal Register on August 27, 1982 (47 FR 37886).

In summary, it is our position that incentive payments are available with respect to collections made via the Federal tax refund offset process because the incentive payment eligibility requirements prescribed in section 458 of the Act and 45 CFR 303.52 are met. OCSE policy regarding this matter is unchanged.

/s/
Fred Schutzman

cc: Linda McMahon
Associate Commissioner
Office of Family AssistanceOct. 21, 1982

OCSE-PIQ-82-10

From: Deputy Director
Office of Child Support Enforcement

Subj: Policy Interpretation on Disallowance of Administrative Costs Associated with Practices Which Do Not Comply with the State Plan

To: Arlus W. Johnston
Regional Representative
Region Vl

This memorandum is in response to your memorandum of September 9 concerning the above referenced subject.

The issues in question are discussed more specifically in James Barnes's memorandum to you dated May 21. We have reviewed that memorandum and your response of June 23. The central questions raised are: Can administrative costs associated with practices which do not comply with the State plan be disallowed? If a unit within the IV-D organizational structure fails to follow approved State guidelines or procedures in providing services, can IV-D auditors recommend disallowance of costs identified and associated with these services?

Administrative costs associated with practices which do not comply with the State plan may not be disallowed for that reason alone. Disallowances are taken for costs associated with activities which are outside the purview of the IV-D program and therefore not eligible for Federal financial participation (FFP). In general when a unit within the IV-D organizational structure performs IV-D program activities, but fails to comply with the State plan, it is a compliance matter and should be taken up in the annual IV-D compliance audit. However, there are certain situations of this type which may be subject to recommendations for disallowance of costs. These situations must be examined on a case by case basis to determine if there is a basis for disallowance of costs.

To illustrate, we will briefly discuss the four types of costs associated with practices which do not comply with the State plan cited in James Barnes's memorandum:

(1) Costs associated with a unit's failure to use established procedures, resulting in performance outside the intended scope of services.

Clearly, costs for the performance of activities outside the scope of the IV-D program are subject to recommendations for disallowance. Such recommendations are based on documentation that the activities are not IV-D activities, and therefore not eligible for FFP, as opposed to the unit's failure to use established procedures.

(2) Costs associated with a State's failure to monitor local IV-D operations.

Failure of a State to properly monitor its State IV-D program is a compliance issue. Under 45 CFR 302.10, States are required to assure that the IV-D plan is in operation in all appropriate offices and agencies through regular planned examination of operations in local offices by State staff. Compliance with this State plan requirement is examined during the compliance audit under 45 CFR 305.21. Of course, if local costs have been incurred for activities unrelated to the IV-D program, those costs are not eligible for reimbursement.

(3) Costs associated with a unit's failure to collect fees.

The collection of fees for non-AFDC services is optional for States as provided under section 454(6). The violation of procedures for the collection of fees by a unit within the IV-D organizational structure of a State which has opted to collect fees for non-AFDC services is a State administrative problem, and a compliance matter. It may also have implications in the area of Federal reimbursement for costs that should have been reduced by fees, but this would be extremely difficult to document for purposes of disallowance.

(4) Costs associated with a unit's failure to properly identify, account for, report and distribute collections.

Improper distribution of child support collections is primarily a compliance issue as specified under 45 CFR 305.20 and 305.28. It may be grounds for disallowance under title IV-A (see attached OCSE-OFA joint memorandum dated May 22, 1981 on implementation of section 407(c) of Public Law 96-265).

In summary, most violations of State guidelines and procedures by units within the IV-D organizational structure of a State should be handled under the IV-D compliance audit. There may be instances where such violations involve activities for which costs should be disallowed. These instances must receive close scrutiny to determine their nature and severity in relationship to allowable IV-D program costs under 45 CFR Part 304.

In the future, in order to avoid delays in responding to policy questions and assure that responses address the specific issues raised, please use the attached format for requesting policy interpretations. If you have questions concerning this procedure, contact the Policy Branch directly.

Fred Schutzman

Attachments

cc: Dave Dimler
OCSE Regional Representatives
Regions l – X

OCSE-PIQ-82-11

Date: Oct. 26, 1982
From: Deputy Director
Office of Child Support Enforcement

Subject: Clarification of Bankruptcy Provision as It Pertains to Non-AFDC Assignment

To: Hugh Galligan
Regional Representative
Region I

This is in response to your September 23, 1982 memorandum to Tom DePippo and the attached correspondence from Maine. We agree with Mr. Raymond Ritchie's interpretation of 11 U.S.C. 523 as amended by section 2334 of P.L. 97-35, the Omnibus Budget Reconciliation Act of 1981. P.L. 97-35 amended section 523(a)(5)(A) of Title 11, United States Code, and section 456 of the Act to prohibit the discharge in bankruptcy of any debt for child support which has been assigned to a State by an AFDC applicant under section 402(a)(26) of the Act. Support obligations voluntarily assigned to the State in nor-AFDC cases may not be exempt from discharge in bankruptcy because such assignments are not made under section 402(a)(26).

Although section 2334 of F.L. 97-35 amended section 456 of the Act, no regulatory changes were necessary. We did, however, issue an Action Transmittal (OCSE-AT-81-20) on September 14, 1981 to notify States of the effect of the provision. Based on recent inquiries we have received on this subject, we believe further clarification is necessary. Therefore, we intend to propose that IV-D agencies inform a non-AFDC individual applying for IV-D services that any assignment of support rights to the State may subject the support debt to discharge in bankruptcy. The proposal will be included in our Notice of Proposed Rulemaking implementing amendments made to the Act by P.L. 97-248, the Tax Equity and Fiscal Responsibility Act, with respect to the recovery of costs in non-AFDC cases. In the meantime, we urge that IV-D agencies voluntarily inform non-AFDC individuals about the discharge possibility.

We are not in a position to comment on the interpretation of the term "assignment" as explained in Mr. Colburn Jackson's letter to you of June 30th. We would, however, be interested in any litigation in which that argument is successfully used. If you have any further questions, please let us know.

Fred Schutzman

cc: OCSE Regional Representatives
Regions I - X

OCSE-PIQ-82-l2
Date: December 14, 1982

From: Deputy Director
Office of Child Support Enforcement

Subject: Potential Problem with Military Dependent Allotments

To: Ruthie Jackson
Regional Representative
Region X

This is in response to your memorandum dated September 21, 1982 requesting that we ask the Department of Treasury (DOT) to contact State agencies before replacing, at the request of the original payee, checks endorsed by State agencies. I apologize for the delay in responding. The Washington State case cited involved a support check for an AFDC recipient who had assigned her rights to support to the State. The AFDC recipient notified DOT that she had not received her check and that, furthermore, she had not authorized anyone to endorse her support checks. As a result, DOT issued her a new check and stopped payment on the check endorsed by the IV-D agency.

We contacted DOT and were informed that DOT cannot contact State agencies before honoring claims in these types of cases. DOT automatically acts on behalf of the payee and, in this case, the payee was the AFDC recipient. For voluntary allotments, the problem must be resolved between the military member and the military finance center. In involuntary allotment cases, the IV-D agency should take steps to ensure that the court order or notice requesting involuntary allotment specifies the IV-D agency as the payee. To provide you with further guidance, we are attaching correspondence concerning this problem and including suggested actions State agencies might take to avoid similar situations in the future.

Since the option you suggested is unavailable, we would suggest that you refer the State to the regulations concerning direct payments published in the Federal Register on October 5, 1982 and transmitted by OCSE-AT-82-13. According to these regulations, States must implement on a Statewide basis either of two methods for the recovery of support payments received and retained by AFDC applicants or recipients. Thus the State of Washington can use whichever method it selects under its State plan to recoup its losses.

We hope these comments have been helpful and if there are further questions, please contact us.

Fred Schutzman

OCSE-PIQ-83-01
January 3, 1983

Deputy Director
Office of Child Support Enforcement

Subject: Federal Income Tax Refund Offset - Incentives

To: Regional Representative
Region IX

This is in response to your request for policy interpretation dated December 2, 1982.

Question 1:

When the initiating State receives incentives on IRS collections are they required to share those incentives with the responding State?

Response:

When an interstate case is submitted by the initiating State for Federal tax refund offset, the initiating State is not required to share the incentive payment with the responding State. In this situation, the initiating State has enforced (via the offset request) and collected (from the tax refund) the past due support.

Question 2:

If both the initiating and the responding State submit the case to IRS for intercept, assuming that OCSE accepts the submittals on a first come first serve basis, and the responding State submitted the name first, what must the responding jurisdiction do with the collections and incentives? Must the collections be sent to the initiating State and the initiating State pay the responding State an incentive as is done in routine reciprocal cases?

Response:

The responding State in interstate cases is not eligible to refer such cases for offset. Regulations at 45 CFR 303.72(b), published February 19, 1982, contain the criteria for determining if a past-due support amount qualifies for offset. One of these criteria is that there has been an assignment of the support obligation to the State making the request for offset. In interstate cases the initiating State has the assignment and, therefore, is the State that may submit the case.

However, in instances where the situation described in your question does occur, the responding State must send the collection to the initiating State and the incentive payment is

payable to the initiating State. The initiating State must only reimburse the responding State the $17 fee charged by the IRS, since the State has incurred this expense while acting as an agent for the initiating State.

Please share this information with your States and, if you have any additional questions, please let us know.

Fred Schutzman

cc: OCSE Regional Representatives
Regions l - Vlll, X

OCSE-PIQ-83-02

Jan 31, 1983

From: Deputy Director
Office of Child Support Enforcement

Subject: Policy Interpretation - Use of the FPLS and the Tax Refund Offset Process to Recover Retained Support Payments from Current or Former AFDC Recipients

To: William Kelsay
OCSE Regional Representative
Region Vlll

This is in response to your memorandum of January 11, 1983 in which you request a policy interpretation on the following issue: Is it permissible to use the Federal Parent Locator Service (FPLS) and the tax refund offset process to recover retained support payments from current or former AFDC recipients? Our position is that neither the FPLS nor the tax refund offset process can be used to recover support payments received directly and retained by the custodial parent. We base our decision on the following.

You ask whether direct payments are covered by the assignment. Section 402(a)(26) of the Act provides that, as a condition of eligibility for aid, each applicant or recipient will be required to assign to the State any rights to support from any other person..." Therefore, once an applicant for or recipient of AFDC assigns to the State his/her rights to support as a condition of eligibility, the State becomes entitled to all support payments, regardless of whether the absent parent forwards the support payments to the IV-D agency or directly to the AFDC family. Thus, retained support payments are covered by the assignment. The recipient is responsible for forwarding any directly received support to the IV-D agency. Under 45 CFR 232.11, if the recipient fails to comply with this requirement, the IV-A agency can find the recipient ineligible for assistance.

As previously stated, neither the FPLS nor the tax refund offset process can be used to recover retained amounts from current or former AFDC recipients. With respect to the FPLS, section 453(a) of the Act states that this service "shall be used to obtain and transmit . . . information as to the whereabouts of any absent parent when such information is to be used to locate such parent for the purpose of enforcing support obligations against such parent." Current authority is specific as to the role of the FPLS; therefore, obtaining locate information on AFDC recipients is not an allowable use of this service.

The tax refund offset process is limited to the collection of past-due child and spousal support from individuals who owe support that has been assigned to the State. Past-due support is

defined in section 464 of the Act as "the amount of a delinquency, determined under a court order or an order of an administrative process established under State law, for support and maintenance of a child, or of a child and the parent with whom the child is living." Retained support payments do not qualify under this definition as past-due support because the support has been paid by the absent parent.

If a State is attempting to recover retained payments from current AFDC recipients, the State should rely on the Federal sanctions that are available under 45 CFR 233.20 or 232.12(d), dependent upon whether the State is a IV-A income or IV-D recovery State. However, in instances where a State is attempting to recover direct payments from former AFDC recipients, the State must rely on other appropriate State and local statutes applicable to recovery. If we can be of further assistance, please let us know.

Fred Schutzman

cc: OCSE Executive Staff

OCSE-PIQ-83-03

Date: 3/1/83

From: Deputy Director
Office of Child Support Enforcement

Subject: Disclosure of IRS Tax Offset Information

To: Linda S. McMahon
Associate Commissioner
Office of Family Assistance

As you may know, your staff has requested that State IV-D agencies share the address information obtained through the Federal tax refund offset process with State IV-A agencies. Since the use and disclosure of this information is governed by the Internal Revenue Service (IRS) under 26 U.S.C. 6103, we requested an opinion regarding this matter from IRS.

In the attached letter dated February 7, 1983, IRS informed us that 26 U.S.C. 6103 does not permit State IV-D agencies to disclose information obtained from IRS to State IV-A agencies. Therefore, State IV-D agencies will not be able to release to State IV-A agencies the address information they receive from the IRS through the tax refund offset process.

Attachment

cc: Regional Representatives
Regions l - X

INTERNAL REVENUE SERVICE

Assistant Commissioner (Returns and Information Processing)
Washington, DC 20224

07 FEB 1983

Mr. Fred Schutzman
Deputy Director
Office of Child Support Enforcement
Department of Health and Human Services
Rockville, MD 20852

Dear Mr. Schutzman:

This is in response to your letter dated January 3, 1983, concerning disclosure of information received from the Internal Revenue Service (IRS). Specifically, you asked whether 26 U.S.C. 6103 allows disclosure of information obtained by you through the Federal tax refund offset process to state Aid to Families with Dependent Children (AFDC) agencies.

We have carefully examined that section of the Code and determined that there are no provisions for information disclosed by the Service to child support agencies to be further disclosed to state AFDC agencies.

We hope this information is helpful to you. If we can be of any further assistance, please let me know.

Sincerely,

M. Eddie Heironimus

OCSE-PIQ-83-04

MAR 1, 1983

Deputy Director
From: Office of Child Support Enforcement

Subject: Interest Charged on AFDC/Non-AFDC Arrearages

To: Richard W. Lewis
OCSE Regional Representative
Region IX

We have reviewed our policy on the above subject, which was expressed to you in our memorandum of March 18, 1982. We now believe it is permissible to charge interest on child and spousal support arrearages in AFDC and non-AFDC cases, if it is authorized under State law. This change in policy is based on both the repeal of section 454(19) of the Act, which required States to impose on absent parents in non-AFDC cases a fee of 10 percent of the support owed, and the results of a regional office survey to determine which States have authority under State law to charge interest on child and spousal support arrearages.

Under our former position, we interpreted the 10 percent fee required under section 454(19) of the Act to represent the only assessment that could be imposed against an absent parent under title IV-D of the Act. Since section 454(19) was repealed by section 171 of P.L. 97-248 effective August 13, 1981, we have concluded that nothing in the Act or regulations prohibits States from imposing interest against absent parents who owe past due support in either AFDC or non-AFDC cases.

In addition, our survey indicated that 29 States have laws authorizing interest ranging from 6 to 18 percent to be charged on support arrearages. Several of these States advised us that the threat of interest is a bargaining tool in confronting delinquent obligors as well as providing an incentive for the obligors to avoid accumulation of arrearages.

In consideration of the above, we have changed our policy on the charging of interest. We now believe that a State can charge interest on child support arrearages, if it is authorized under State law. States must be made aware, however, that unless State law specifically deems interest to be separate from the support owed, any interest collected by a State in an AFDC case must be considered as payment toward the support obligation in accordance with section 456(a)(2) of the Act. Section 456(a)(2) requires that amounts collected in AFDC cases must reduce, dollar for dollar, the support obligation due. In non-AFDC cases,

the current support obligation must be satisfied before any payment is made on the arrearage. If the entire arrears in a non-AFDC case is owed to the State, any interest collected must also Page 2

be used to reimburse the State for AFDC paid to the family in accordance with 45 CFR 302.51. Interest collected where there is only a non-AFDC arrearage must be paid to the family. In non-AFDC cases where there are both AFDC and non-AFDC arrearages, the State has discretion to offset either arrearage.

In those States where State law specifically deems interest to be separate from the support owed, recovery of interest is considered program income and must be excluded from the State's quarterly claims for FFP as required by section 455(a) of the Act.

Please pass this information on to States in your region. If you have further questions about this matter, please contact the Policy Branch.

cc: OCSE Executive Staff

OCSE-PIQ-83-05
Date: MAR 8, 1983

From: Deputy Director
Office of Child Support Enforcement

Subject: Treatment of Support Payments Used to Determine a Family's Eligibility for AFDC

To: Mr. Arlus Johnston
OCSE Regional Representative
Region Vl

This is in response to your memorandum dated December 15, 1982 regarding the above subject (section 173 of P.L. 97-248). Louisiana asked that OCSE and the Office of Family Assistance (OFA) reconsider the interpretation of the statute regarding reimbursement of the State agency in the initial month of ineligibility in the formulation of any changes to 45 CFR Parts 200 and 300.

Section 173 of P.L. 97-248, in effect, allows the State to retain the support collected on behalf of a family which causes ineligibility for AFDC rather than paying it to the family in the initial month of ineligibility for AFDC. Its intent was to eliminate the past practice of the family receiving a "double" payment of support in that month and to allow the State to reimburse itself for the AFDC paid to the family in the month the support which caused ineligibility was collected. The language of the statute does not allow for a more flexible interpretation in the regulation. Therefore, we published an interim final rule with comment period on January 20, 1983 (48 FR 2540) which amends 45 CFR 302.32(b) to delete the requirement that the IV-D agency pay the support collection which caused ineligibility to the family in the first month of ineligibility. Instead, the support collected which caused ineligibility will be used to reimburse the State and Federal governments for the assistance paid to the family in the month that the support which caused ineligibility was collected.

The IV-D agency should forward any support collection received for the first month of ineligibility to the individual as quickly as possible. In the preamble to our regulation amending 45 CFR 302.32(b), we urge States to forward the support payment to the family within two days of its receipt. We plan to survey States, via the Regional Offices, to obtain data on "turn-around," times for processing collections received in the first month of ineligibility. However, this will not resolve situations where the child support collection is received by the IV-D agency late in the first month of ineligibility or not at all. Please note that, when the former AFDC family does not receive the anticipated support collection in the first month of ineligibility, OFA has taken the position that the caretaker should promptly notify the IV-A agency. That agency will

redetermine eligibility for that month and, if appropriate, authorize an assistance payment for that month as a correction of an underpayment under 45 CFR 233.20(a)(13)(ii).

We cleared this response with OFA to ensure that the policy is consistent with OFA policy. If you have any further questions on this issue, please let us know.

Fred Schutzman

cc: Linda McMahon
Associate Commissioner, OFA

OCSE Regional Representatives

Date: December 15, 1982 .

From: Regional Representative/RO VI
Office of Child Support Enforcement

Subject: Policy Interpretation

To: Fred Schutzman
Deputy Director
Office of Child Support Enforcement

STATEMENT OF PROBLEM: (LOUISIANA)

The State of Louisiana has notified the Regional Office that the current interpretation of Section 173 of Public Law 97-248 regarding the reimbursement of State agency in initial month of ineligibility has created a problem for AFDC families and for the AFDC Program Administration. For those cases in which AFDC is terminated due to a support collection and obligation which exceed the amount of AFDC paid in that same month and in which the absent parent makes no payment in the first month of ineligibility, the family will not receive financial support of any kind during the first month of ineligibility. Consequently, such families immediately are eligible for AFDC. This interpretation would have the AFDC Program consider as income to the family, support collections which the family may not receive and terminate eligibility based on such conditions. This results in reinstating numerous AFDC cases.

Citation OF LAWS, REGULATIONS AND OTHER APPLICABLE POLICY STATEMENTS:

Public Law 97-248, Section 173
45 CFR 302.51
Dallas Regional Title IV-D Letter No. 82-07 - dated September 28, 1982 45 CFR 232.20(a)(1)
45 CFR 302.32(b)

QUESTION(S):

The State has asked that the Central Office of Child Support Enforcement and Office of Family Assistance reconsider the interpretation of Section 173 of Public Law 97-248 regarding the reimbursement of State agency in initial month of ineligibility and take this information into consideration in the formulation of any changes to 45 CFR Parts 200 and 300.

PROPOSED SOLUTION:

Prior to promulgate of the revised regulations, the Central Office of Child Support Enforcement and the Office of Family Assistance take into consideration the impact of the current interpretation of AFDC families and AFDC program administration as any savings resulting from such a procedure will be outweighed by the administrative costs of terminating and reinstating AFDC cases in the same month and any appeal process resulting from such a procedure.

Arlus W. Johnston

OCSE-PIQ-83-06
Date: March 9, 1983

From: Deputy Director
Office of Child Support Enforcement

Subject: Mediation and Referral Process - Pima County

To: Richard W. Lewis
OCSE Regional Representative
Region IX

This is in response to your memorandum dated November 3, 1982 requesting a policy interpretation regarding whether or not mediation activities provided by an administrative aide at the Pima County Arizona Family Support Unit can be considered appropriate IV-D services. Please accept my apology for the delay in responding but this was an area that we had not addressed before and we wanted to look at it very closely.

The correspondence attached to your memorandum describes the primary activities of the aide as conducting URESA interviews with petitioners, responding to case status requests from clients and handling case referrals for mediation services from investigators and attorneys. The secondary activities described are: mediation, crisis intervention, and referrals to social service agencies.

In your memorandum, you are concerned mainly with the secondary activities of the aide, particularly mediation. You state that the IV-D program and IV-D client are benefiting from the aide's services and that FFP should be available for mediation activities based on a methodology that includes costing out non-IV-D services to other programs.

We agree that certain mediation activities can benefit the IV-D program and IV-D client by potentially providing a viable and cost-effective means of ensuring the timely payment of support by absent parents to their families. In the attachment to your memorandum, Mr. Lowenberg asserts that mediation activities can: (1) increase child support collections by facilitating the voluntary establishment of paternity and the payment of child support, (2) save legal staff time and time spent in litigation, thereby reducing unnecessary costs to the IV-D program, (3) positively influence the involved individuals' perceptions of the IV-D agency role, and (4) help some families remain self-sufficient.

While 45 CFR 303.20(c) does address program staffing requirements, 45 CFR 304.20 governs the allowability of expenditures for child support enforcement services provided under the IV-D State plan. In a case without a court order, some mediation activities can potentially contribute to accomplishing the IV-D functions of (1) establishing the legal obligation to

support, including paternity determination, (2) determining an absent parent's ability to provide

support, and (3) determining the amount of an absent parent's support obligation. In a case where there is a court order, certain mediation activities can provide information that is useful in the enforcement of the orders and can also result in voluntary compliance, thus saving costs of such activities as service of process and court time. Since the mediation activities performed by the administrative aide in Pima County appear to be primarily directed toward accomplishing the IV-D services of establishing paternity and establishing and enforcing support obligations under 45 CFR 304.20(b)(2) and (3), those mediation activities are eligible for FFP.

Under certain circumstances, crisis intervention and referral services may be incidental and inseparable from IV-D functions. In such situations, these services might be construed as "necessary expenditures properly attributable to the child support enforcement program." However, FFP is not available under 45 CFR 304.20 for time allocated to non-IV-D functions, and person hours devoted to providing such services should not be charged to the IV-D program.

To ensure that FFP is provided only for IV-D functions, including the mediation activities described in the attachments to your memorandum, we suggest that you refer the State IV-D agency to the attached OMB Circular A-87, Attachment B, B. 10.b Payroll and Distribution of Time, which requires maintenance of separate records to distinguish time spent on IV-D versus non-IV-D activities.

If there are any further questions, please let us know.

Fred Schutzman

Attachment

cc: OCSE Executive Staff

OCSE-PIQ-83-07

Department of Health & Human Services
Office of Child Support Enforcement"

Date: APR 1, 1983

From: Deputy Director

Office of Child Support Enforcement

Subject: Collection of Support Arrearages for Closed Cases in Which a Good Cause Determination Has Been Made

To:
Regional Representatives
Regions I-X

Attached for your information is a copy of a response from the SSA Regional Commissioner, Region X, to Ruthie Jackson in regard to the subject cited above. Since this policy interpretation affects State IV-D agencies, you may wish to share this information with the States in your regions

Fred Schutzman

Attachment

Refer to: SDXA:FA-7

Date: February 15, 1983

From: Regional Commissioner
Seattle Region

Subject: Idaho Inquiry on IV-D Good Cause (Your Memo of Nov. 4, 1982)

To: Regional Representative
OCSE, Region X

We have obtained a clarification on the pursuit of support arrearages for closed cases that had good cause waiver on enforcement.

ISSUE

In implementing the new IRS tax refund offset provision contained at 45 CFR 303.60 and 303.72 (these regulations were published in the Federal Register as a final rule January 20, 1983, V. 48, No. 14, pp. 2534-8, see attached copy), Idaho asks whether the IV-D agency can refer cases in which good cause determinations were made by the IV-A agency.

RESPONSE

Based on 45 CFR 303.72(b), a State IV-D agency must make reasonable efforts to collect assigned past due support before referring a case to OCSE for IRS tax refund offset. Under 45 CFR 232.49 a State plan may provide that the IV-A agency must determine whether support enforcement can proceed without risk of harm to the child or caretaker relative in cases where the State has found good cause circumstances to apply. The Idaho State agency has elected this option in their approved State Plan (attached). Therefore, in all IV-A cases, open or closed, the IV-D agency may only proceed with support enforcement after review by the IV-A agency.

However, under 45 CFR 232.47, the State or local IV-A agency must periodically review these cases to determine whether the circumstances have changed, and if so, determine whether the IV-D agency can proceed.

Based on the new IRS tax refund offset authority, the IV-D agency may wish to immediately pursue child support arrearages in cases for which good cause determinations were made. If so, the IV-D agency must request the IV-A agency to review the good cause determinations outside of the periodic review schedule if workloads permit. The IV-A agency will determine whether good cause currently exists and whether the IV-D agency may proceed to pursue support.

There may be instances where the IV-D agency is considering referral of terminated AFDC cases for the IRS tax refund offset. If good cause was found to exist previously, no referral can be made unless the IV-A

agency has reviewed the finding and determines no good cause now exists. If the recipient or former recipient is claiming that good cause now exists where none was claimed or found previously? the IV-A agency must make a current determination. If the referral has already been made, the IV-D agency should make every effort to have the referral of the name of the absent parent withdrawn from the Internal Revenue Service tax refund offset.

For further questions, please contact Rose Inouye at 2-5734.

Donald C. Sutcliffe

Attachments

OCSE-PIQ-83-08
APR 29, 1983

From: Deputy Director Office of Child Support Enforcement

Subject: Definition of Authorized Agent Under 45 CFR 303.15(a)(1)(i)

To: Richard W. Lewis
OCSE Regional Representative
Region IX

This is in response to your memorandum requesting a policy interpretation regarding the definition of an authorized person contained in 45 CFR 303.15(a)(1)(i). The State of Hawaii requested clarification of this regulation since, according to the Hawaii Judiciary, the only person or entity authorized to enforce a child custody determination is the court. In addition, the State asks if foster care workers can access the Federal Parent Locator Service (PLS).

We believe the definition, which is taken from section 463(d)(2)(A) of the Social Security Act (the Act), provides States some flexibility to establish who qualifies as an authorized person under State law. However, in response to your request, we offer the following information. Section 463(d)(2)(A) of the Act applies to those agents and attorneys who are empowered to act on behalf of the State to enforce a child custody determination. Examples of such agents are officers employed by the State, such as social workers and law enforcement officials, including a State's attorney empowered to act on behalf of the State to prosecute a parental kidnapping or child custody case. It does not include a private attorney. In addition, we do not consider private attorneys to be agents of the court for purposes of section 463(d)(2)(B) since they do not have the authority to make or enforce a child custody determination. Consequently, private attorneys may not apply directly to the State PLS for Federal PLS information in parental kidnapping and child custody cases. Private attorneys may, however, petition a court to request locate information from the Federal PLS concerning the absconding parent and missing child.

We are unable to adequately respond to the latter question concerning foster care workers because of insufficient information. Does the court intend to designate foster care workers as agents of the court under section 463(d)(2)(B)? Are foster care workers authorized under State law to enforce child custody determinations under section 463(d)(2)(A)? We believe that foster care workers may be considered authorized persons under section 463(d)(2)(A) if authorized under State law to enforce a child custody determination and agents of the court under section 463(d)(2)(B) of the Act if they are designated by the court to make or enforce a child custody determination. However, if foster care workers are designated as

agents of the court, their requests must be made under the supervision of the court to ensure the confidentiality of the Federal PLS information and the appropriateness of the request.

If we can be of further help, please contact us. If you have questions concerning Hawaii State law, you may wish to contact the Regional attorney for further assistance.

Fred Schutzman

cc: OCSE Executive Staff

REQUEST FOR POLICY INTERPRETATION

To: Fred Schutzman

From: Regional Representative, OCSE
Region IX

SUBJECT: Policy Interpretation Regarding the Definition of Authorized Agent Under 45 CFR 303.15 (a)(1)(i).

STATEMENT OF PROBLEM: (include State)

According to the Hawaii Judiciary, the only person or entity authorized to enforce a child custody determination is the court. Currently, the State is concerned whether requests for FPLS data can be honored from Foster Care Services workers.

CITATION OF LAWS, REGULATIONS AND OTHER APPLICABLE POLICY

STATEMENTS:
The Regional Office has reviewed 45 CFR 303.15 regarding this area. No specific data can be found to address the specific concern of Hawaii.

QUESTION(S):
The State of Hawaii questions whether Foster Care workers can access the FPLS. To date, the state has apparently honored very few requests due to the lack of clear Federal Guidelines on exactly who may have access.

PROPOSED RESOLUTION:
It is the regional position that Foster Care workers are eligible to request data. This based on the desire to develop closer working relationships with other state departments for the benefit of the program. The definition was written to allow the maximum state flexibility in designating those individuals who are acceptable as authorized agents.

Our office has attached copies of the state's incoming letter and our initial October 15, 1982 interpretation. We would appreciate your review of the concern and providing our office with a policy interpretation as quickly as possible.

Please direct all questions regarding this issue to JP Soden at (8) 556-5176.

Richard W. Lewis

Attachments

cc: Judy Hagopian, Policy Branch

OCSE-PIQ-83-09

Date: MAY 11, 1983

Deputy Director
From: Office of Child Support Enforcement

Subject: Cost Recovery in Interstate Non-AFDC Cases

To: Mr. Arlus W. Johnston
OCSE Regional Representative
Region Vl

On December 20, 1982 and February 21, 1983, I received letters from Susan
C. Jeffries, now Susan C. Smith, Chief, North Carolina Child Support Enforcement Section, regarding the decision by Arkansas and Oklahoma to recover costs from collections in interstate non-AFDC cases.

Attached are copies of Ms. Smith's letters and our response. Under current statute and regulations, there is no problem with Arkansas and Oklahoma recovering costs from collections made as responding States in interstate non-AFDC cases. However, you should inform Arkansas to discontinue sending its contractual notice to non AFDC individuals who have applied for IV-D services in other States. Arkansas may continue to send the contractual notice in intrastate cases, if it wishes.

The Arkansas notice requests that the client sign the notice if he or she wishes to continue the child support enforcement contract with the Arkansas IV-D agency, and indicates that the client's case will be closed in accordance with the provisions of the contract if the signed notice is not returned by a specified date. Non-AFDC individuals who have applied for IV-D services in other States do not have a contractual arrangement with Arkansas for the provision of IV-D services by Arkansas. In addition, Arkansas cannot make the signing of a notice a condition for the provision of IV-D services because section 454(9) of the Act and 45 CFR 302.36 require States to provide IV-D services on behalf of cases referred from other States. Thus, as the responding State in an interstate case, Arkansas may not require an individual to sign a contract to initiate or continue services.

As you know, 45 CFR 302.33(c) requires a IV-D agency that recovers costs from collections to notify the individual receiving services of that fact. Thus, Arkansas must insure that all individuals receiving non-AFDC services from Arkansas, in both intrastate and interstate cases, are informed that costs will be recovered.

Lastly, the material attached to Ms. Smith's letter of December 26, 1982 indicates that both Arkansas and Oklahoma retain a flat

percentage of each non-AFDC collection as recovered costs. As indicated in our response to Ms. Smith and in responses to several other policy inquiries on this subject, we believe that Federal law permits States to recover actual costs from non-AFDC collections or retain a flat percentage of the dollar amount of support collected in IV-D non-AFDC cases, provided that the amount retained does not exceed the actual costs incurred in collection of support in a given case. To assure that the amount retained in a given case does not exceed actual costs, we believe that a State which elects to retain a flat percentage of each non-AFDC collection must periodically reconcile, on a case by case basis, the amount retained as recovered costs with actual services provided.

In order to assure proper implementation of Federal law, please ascertain how Arkansas and Oklahoma are complying with the requirement that the amount retained as recovered costs does not exceed the actual costs incurred in collection of support in a given case. In a memorandum to Ms. Smith dated November 22, 1982, Arkansas indicates that, effective December l, 1982, amounts retained as recovered costs in non-AFDC URESA cases will, on a case by case basis, be reconciled semi-annually with actual costs. Any excess amount retained will be paid to the family. Does this reflect State policy and practice? In a memorandum dated December 10, 1982 to all State IV-D agencies, Oklahoma indicated that, effective January l, 1983, the State IV-D agency will begin to retain ten percent of each non-AFDC child support collection as recovered costs. Oklahoma's failure to address in their memorandum the reconciliation of amounts retained as recovered costs to actual costs is of particular concern. Please ascertain how Oklahoma is complying with the requirement that the amount charged does not exceed the actual costs incurred in collection of child support in a given case.

Fred Schutzman

Attachments

cc: OCSE Regional Representatives
Regions I - X

MAY 11, 1983

Ms. Susan C. Smith, Chief
Child Support Enforcement Section
Division of Social Services
Department of Human Resources
441/443 N. Harrington Street
Raleigh, North Carolina 27603-1393

Dear Ms. Smith:

This is in response to your letters dated December 20, 1982 and February 21, 1983. The latter transmitted an opinion dated February 17, 1983 from Mr. Clifton H. Duke, North Carolina Assistant Attorney General, regarding the recovery of costs in interstate Uniform Reciprocal Enforcement of Support Act (URESA) cases.

After careful review of the central issue raised in your correspondence, namely, whether or not Arkansas and Oklahoma as responding States may recover costs in non-AFDC cases for collection of support in proceedings filed under the URESA, we cannot agree with the points presented as key to the issue.

Mr. Duke indicates in his opinion that Federal law authorizes IV-D agencies to charge an application fee and recover costs in interstate URESA cases only when the agencies provide resident non-AFDC individuals the IV-D services necessary to initiate proceedings under the URESA. OCSE policy regarding the imposition of an application fee and recovery of costs is as follows.

Section 454(6) of the Social Security Act (the Act) and 45 CFR 302.33 permit the State to elect in its State plan to charge an application fee to each non-AFDC individual who applies for IV-D services with the State IV-D program. If a State elects to charge an application fee, the fee must be imposed under the same guidelines on any resident or non-resident of the State who applies directly to the State for IV-D services regardless of the services actually provided.

As you may know, section 171(a)(3) of Public Law 97-248, the Tax Equity and Fiscal Responsibility Act of 1982, amended section 454(6)(C) of the Act to permit a State to recover costs either from the absent parent or from the individual who has filed an application for IV-D services. The State may recover costs from the individual receiving IV-D services only if it has in effect a procedure for informing all persons authorized within the State to establish an obligation for support that the State will recover costs from the individual receiving IV-D services. Under this provision, we believe that a State may recover actual costs from collections or retain a flat percentage of the dollar amount

of support collected in IV-D non-AFDC cases, provided that the amount retained does not exceed actual costs incurred in a given case. A State which elects to retain a flat percentage of each non-AFDC collection must periodically reconcile, on a case by case basis, the amount retained with actual services provided. We also believe that if two States incur costs on an interstate non-AFDC case, both States are entitled under current Federal law to recover

costs from a resident or non-resident if recoveries are provided for under their respective State plans and the proper notification has been provided to the non-AFDC applicant/recipient as required under OCSE regulations at 45 CFR 302.33(c).

Mr. Duke also indicates that the Arkansas and Oklahoma proposal to defray the expenses of responding jurisdiction URESA activities via a second tier of fees and cost recovery seems impermissible under 42 U.S.C. 654(b). In addition, you indicate in your letter of December 20 that it is the responsibility of the initiating State to charge an application fee and recover costs. We agree that 42 U.S.C. 654(6) does not permit the responding State in a non-AFDC case filed under URESA to charge an application fee to the non-AFDC individual. However, we believe that Federal law permits both the initiating and responding States to recover costs they incur in non-AFDC IV-D cases.

Lastly, Mr. Duke indicates that Arkansas and Oklahoma have attempted to obtain IV-D applications from non-AFDC individuals or other State IV-D agencies in interstate URESA cases. You also ask in your letter of December 20 how a non-AFDC client in North Carolina whose former spouse resides in Arkansas should respond to the notice she received from Arkansas. Neither section 454(8) of the Act nor 45 CFR 302.33 require an individual who applied for IV-D services in one State to apply for services in a second State when the case is referred to that State. Nonetheless, section 454(9) of the Act and OCSE regulations at 45 CFR 302.36 require States to provide IV-D services with respect to cases referred from other States. Therefore, the client is not required to sign and return the Arkansas notice because she filed an application for IV-D services with the North Carolina IV-D agency and has no contractual arrangement with Arkansas. In addition, Arkansas may not refuse to provide IV-D services to the client because the client has decided not to sign the notice.

The Arkansas notice, as written, should only be sent to individuals who have contracted with the State of Arkansas for IV-D services. However, Arkansas may use a revised notice to meet the notification requirement prescribed in 45 CFR 302.33(c). We will ask our Dallas Regional Office to inform Arkansas of our position regarding this matter.

For your information, OCSE expects to publish proposed

regulations in the Federal Register that implement section 171(a)(3) of Public Law 97-248 within the next few weeks. These proposed regulations will permit States to recover costs in non-AFDC cases as described in this letter. They will provide for a 60-day comment period to give the public an opportunity to submit to us in writing any concerns they may have on this subject.

I hope this information is helpful to you.

Sincerely yours,

Fred Schutzman
Office of Child Support Enforcement

OCSE-PIQ-83-10
Date: JUN 2 1983

Deputy Director
From: Office of Child Support Enforcement

Subject: Policy Interpretation - Treatment of Retained Direct Child Support Payments

Ruthie Jackson
To: OCSE Regional Representative
Region X

This is in response to Vince Herberholt's memorandum of May 13, 1983 regarding the questions on the recovery of retained direct payments submitted to your office by the State of Washington. We have responded to the following questions since they concern the Child Support Enforcement program:

1. Is it really necessary to limit the selection of a recovery process to an "either/or" proposition? Shouldn't the State be given the flexibility to determine the collection method that's best for the case? (Open welfare cases - IV-A recovery and closed welfare cases - IV-D recovery.)

   In developing the final regulation, the Department felt that duplicate systems for recovering directly received and retained support payments would be administratively burdensome, create confusion and increase the possibility of duplicate recoveries from the AFDC recipient. Under the final regulation, a State cannot choose to be a IV-A income State while the responsible individuals are receiving AFDC and a IV-D recovery State after the case is closed. In a IV-A income State, the responsibility of the IV-A agency to collect overpayments of assistance does not end when the case is closed. Thus, it would be inconsistent with current regulations for the State to function as a IV-D recovery State once a case is closed. Similarly, the responsibility of the IV-D agency in a IV-D recovery State to collect retained support does not end when the AFDC case is closed. Therefore, to provide a uniform Federal policy that is workable and equitable to all States and to ensure equal treatment of AFDC recipients, the regulations require that each State select one of the two methods for treatment of retained direct payments and apply the procedures specified in that selected method to all recipients within the State.

2. Are child support payments made under an assignment and retained by the recipient considered to be a child support debt or a State debt owed by the recipient?

   Section 402(a)(26) of the Act provides that, "... as a

condition of eligibility for aid, each applicant or recipient will be required to assign to the State any rights to support from any other person. .." Therefore, if support payments are retained by the recipient during the period covered by the assignment, they are considered a debt owed by the recipient to the State. In effect, once an applicant for or recipient of AFDC assigns to the State his/her rights to support as a condition of eligibility, the State becomes entitled to all support payments, regardless of whether the absent parent forwards the support payments to the IV-D agency or directly to the AFDC family. Under 45 CFR 232.12(d), if the recipient fails to forward any directly received support payments to the IV-D agency, the IV-A agency can find the recipient ineligible for assistance.

3. If we consider retained child support to be a State debt only, can we regulate the method of collection or distribution, and can we pay FFP for the effort under IV-A or IV-D? Is there a difference when the recipient is no longer on assistance?

In the answer to the previous question, we addressed the fact that retained support payments are covered by the assignment which gives the State the right to recover such payments. Section 454(5) of the Act states that".. . in any case in which support payments are collected for an individual with respect to whom an assignment under section 402(a)(26) is effective, such payments shall be made to the State for distribution pursuant to section 457 and shall not be paid directly to the family. . ." This statute, therefore, provides the IV-D agency with the authority to regulate the distribution of retained support payments recovered via the IV-D recovery method..

With respect to the availability of FFP for the recovery of retained payments, FFP is available under title IV-D of the Act to recover these amounts, provided the State elected the IV-D recovery method. OCSE regulations at 45 CFR 304.20(a)(1) state that FFP is available for "necessary expenditures under the State title IV-D plan for child support enforcement services and activities. . . provided to individuals from whom an assignment of support rights has been obtained pursuant to Sec. 232.11 of this title." The availability of FFP under title IV-A of the Act will be addressed by the Office of Family Assistance in their response.

As previously stated, since retained support payments are covered by the assignment, FFP is available under title IV-D of the Act to recover these amounts when the recipient is no longer on assistance, provided the State is a IV-D recovery State.

4. When the recipient will not enter into a repayment agreement, can IV-D as an alternative to requesting protective payment attach the assistance payment with a garnishment order?

   No. If a State elects the IV-D recovery method, it may only recover retained payments using the recovery method authorized under 45 CFR 303.80. Under Sec. 303.80, there is no provision that authorizes a IV-D agency to garnish a recipient's AFDC grant. However, when a recipient is no longer on assistance but continues to owe retained support payments, the IV-D agency may use whatever State remedies that are available to recover these amounts. If garnishment is permissible under State law, this may be an effective method for recovering retained payments from former recipients.

5. Is the IV-D agency required to maintain any specific level of effort in recovering direct payments from recipients? What are the consequences to the State if these "Child Support" obligations are ignored? Can the State justify inactivity if they can prove these collections are not cost effective using the IV-D method? Is a State law that bars IV-D collection in conflict with our regulations? Would that law relieve the State from collection action until the recipient has terminated assistance?

   The IV-D agency is expected to work direct payment cases at the same level of activity that it works other cases. If an audit of the Child Support Enforcement program reveals that the State is not pursuing recovery of retained support payments, the State may be subject to a 5 percent reduction of its AFDC funds under section 403(h) of the Act and 45 CFR 305.50. However, if a State finds that the IV-D recovery method is not cost effective, the State may amend its IV-A and IV-D State plans to elect the IV-A income method of recovery?

   The regulations require either the IV-A or IV-D agency to recover retained support payments. If a State law exists that does, in fact, conflict with the IV-D recovery method, the State should elect either to recover direct payments by the IV-A income method or to amend the State law to allow use of the IV-D method. It would be unacceptable to elect the IV-D recovery method and to delay collection action until the recipient has terminated assistance.

It is my understanding that OFA Central Office has received your memorandum and will respond to the remaining questions. If we can be of further assistance, please let us know.

cc: Alice Stewart, OFA

OCSE Regional Representatives
Regions l -IX

OCSE-PIQ-83-11
JUN 22 1983

From: Deputy Director
Office of Child Support Enforcement

Subject: Maximum Amount of Unemployment Compensation to be Intercepted

To: Mr. Tom DePippo
OCSE Regional Representative, Region II

This is in response to your request for policy interpretation dated June 1, 1983, regarding the maximum amount of unemployment compensation benefits that can be withheld by the IV-D agency for unmet support obligations.

The citation of authorities noted in your memorandum, which we had previously discussed, does not specify any limitations on the amount of unemployment compensation that can be withheld. Sections 2335(a) and (b) of P.L. 97-35 (sections 454(19)(A) and (B) of the Social Security Act) merely provide that an absent parent's unmet child support obligation can be enforced by withholding unemployment compensation. This can be done by voluntary agreement "to have specified amounts withheld...or...in the absence of such an agreement, by bringing legal process...to require the withholding of amounts from such compensation."

If a voluntary agreement cannot be obtained, section 454(19)(B) requires the use of legal process in the nature of garnishment. Such process would be pursuant to State law and ordinarily subject to the Consumer Credit Protection Act (CCPA). However, the Department of Labor (DOL) does not specify unemployment benefits in the definition of earnings contained in section 1672(a) of the CCPA. Therefore, the limitations on garnishment in section 1673(b)(2) of the CCPA do not apply. We verified this interpretation with the Employment and Training Division of the DOL.

Any limits on the maximum amount that can be withheld from unemployment compensation benefits is at the discretion of the State. The preamble to our final regulation will clarify that there is no Federally imposed limit on amounts which can be withheld from unemployment compensation benefits. However, there may be State laws which impose such limits. Each State will have to determine such limitations based upon its laws. This response to your memorandum and our clarification in the preamble to the final regulation will provide the Regions and the States with a clear policy statement on the maximum amounts which States may withhold from unemployment compensation benefits.

Fred Schutzman

cc: OCSE Regional Representatives
Regions l, 111 - X

Date: JUN 1 1983

From: Regional Representative
Region II

Subject: Request for Policy Interpretation
Maximum Amount of Unemployment Compensation to be Intercepted

To: Fred Schutzman, Deputy Director
Office of Child Support Enforcement

Statement of Problem:

Both New York and New Jersey have requested our guidance with respect to the maximum amount that may be intercepted from an individual's unemployment compensation.

Both State IV-D agencies have contacted their counterparts in the State employment security agencies (SESAs) regarding this issue and have received responses indicating that there is no restriction on the maximum amount of unemployment compensation that may be withheld. We have contacted the regional office of the U.S. Department of Labor (DOL) who maintain a similar position.

We are unsure whether the DOL and SESAs are correct, or whether the limitations regarding maximum garnishment as set forth in the Consumer Credit Protection Act (section 1673(b)(2) A and B of title 15 of the U.S. Code) are applicable.

Citation of Laws, Regulations and Other Applicable Policy Statements:

Sections 2335(a) and (b) of Public Law 97-35 Sections 1673(b)(2)A and B of title 15 of United States Code (Consumer Credit Protection Act.)
45 CFR 302.65 - Withholding of unemployment compensation - Notice of Proposed Rulemaking (OCSE AT-83-4, dated 2/3/83)
29 CFR 870 - Restriction on garnishment
5 CFR 581.104 _ Subpart A - Processing garnishment orders for child support and/or alimony.
5 CFR 581.101 - 401ff - Subpart D-Consumer credit protection act restrictions.

ln the preamble of the notice of proposed rule making for 45 CFR 302.65, there is a discussion of the criteria a State might use to refer cases for unemployment compensation offset. The section indicates that "case selection criteria might (our underscoring) include for example...that withholding of any amount of unemployment compensation should not reduce the amount of benefits below a specified amount per week." There is no indication in this section that there is a limitation on the maximum amount that could be withheld.

5 CFR 581.402 discusses the Consumer Credit Protection Act and its application to a maximum amount that may be withheld from aggregate disposal earnings. In our discussions with Central Office we learned that contacts with the Department of Labor reveal that they do not consider unemployment compensation as earnings, leading them to the conclusion that sections 1673(b)(2)A and B of 15 U.S. Code are not applicable. This position appears to be supported by the fact that unemployment compensation is not included in 5 CFR 581.103 (moneys which are subject to garnishment). Section 1672(a) of 15 U.S. Code indicates that earnings mean compensation paid or payable for personal services. Included in this definition are wages, salary, commissions, bonuses or periodic payments pursuant to a pension or retirement program. Unemployment does not appear to fit into any of these categories.

Question:

Is the withholding of unemployment benefits as outlined in section 2335 of Public Law 97-35 (which amends sections 303(e)(2)(A) and 454 of the Social Security Act) subject to the garnishment limitations in the Consumer Credit Protection Act or may a State withhold any amount (up to 100% of the unemployment check)?

Proposed Resolution

If it was the intent of the aforementioned Public Law to have unemployment intercept limited to a maximum amount, then further discussion is necessary with the Department of Labor to clarify this point. If that is the case, the final regulation at 45 CFR 302.65 should be annotated to indicate that the Consumer Credit Protection Act limits the amount of unemployment that may be withheld. Additionally, contact with the agency responsible for publishing 5 CFR 581 ff would be necessary since that regulation would need to be modified.

If it was not the intent to apply a limit, then an instruction to that effect should be promulgated so that Regional Offices may adequately inform their States of the proper interpretation.

For your information, New York and New Jersey are leaning towards an interpretation that no maximum exists and that the total unemployment check may be withheld. It must be remembered that the States' interpretation may be somewhat affected by their incentive to increase collections and enhance the cost-effectiveness of the unemployment intercept process. We, of course, are also interested in improving collections but wish to be sure that the law is being implemented correctly and that both the custodial and absent parent's rights are adequately protected.

While we are unsure of the correct interpretation, we see nothing in the cited references that would lead us to disagree with the positions being proposed by the States.

We would appreciate your prompt consideration of this issue and look forward to receiving your interpretation.

Thomas DePippo

OCSE-PIQ-83-12
Date: JUN 10, 1983

From: Deputy Director
Office of Child Support Enforcement

Subject: Policy Question -IV-D Non-Cooperation of AFDC Clients

To: Charles H. Post
OCSE Regional Representative
Region IV

This is in response to your memorandum dated February 2, 1983 attaching Florida's concerns about an Office of Family Assistance (OFA) memorandum dated November 3, 1982 on the application of sanctions against AFDC recipients who refuse to cooperate without good cause in establishing paternity and securing support.

The OFA memorandum in question was coordinated with OCSE and we agree with OFA's position that a sanctioned AFDC recipient must always be afforded the opportunity to cooperate in any action necessary and relevant to establishing paternity and securing support, and that permanent denial of AFDC is not permissible under applicable Federal statute and regulations. However, for further clarification, we will address Florida's objections to the memorandum.

Florida is concerned about OFA's position in cases where failure to cooperate without good cause permanently bars any legal recourse in establishing paternity and securing support. We cannot support Florida's position that in such cases any subsequent actions concerning the establishment of paternity are meaningless and cannot be considered cooperation. We know that there are actions that can be relevant and necessary. The OFA memorandum makes it quite clear that a recipient can show cooperation in numerous ways even though the statute of limitations for establishing paternity may bar further legal action. Further, such a position as Florida's is tantamount to applying a permanent sanction. According to the OFA memorandum, "permanent denial of AFDC is not permissible under the law and Federal policy."

Also, we cannot support Florida's position that the IV-D agency be the one to determine what actions constitute cooperation. The responsibility for establishing paternity on behalf of AFDC recipient children rests with the State and local child support enforcement agencies as provided in section 454 of the Act. However, section 402(a)(26) of the Act gives the IV-A agency the authority to determine whether or not a recipient has failed to cooperate with child support enforcement authorities and whether or not to apply or remove the sanction. The IV-D agency report must contain not only a statement of failure to cooperate without good cause but also substantiating evidence. Based on the information they have provided, the IV-D agency must be willing

to participate in any hearings under 45 CFR 205.10 that are related to failure to cooperate without good cause. The IV-A agency must give the IV-D agency adequate notice prior to any hearings and also afford them an opportunity to participate.

In conclusion, we concur with the position taken by OFA and cannot support Florida's position. Please advise the Florida IV-D agency accordingly.

Fred Schutzman

OCSE-PIQ-83-13
JUN 22 1983
From: Deputy Director
Office of Child Support Enforcement

Subject: Policy Interpretation: Collection Services after Termination of Eligibility

To: OCSE Regional Representatives
Regions l - X

As you know, section 457(c)(1) of the Act and the implementing regulation at 45 CFR 302.51(e)(1) permit the State to continue to collect current support payments from the absent parent for a period not to exceed three months from the month following the month in which the family ceased to receive assistance under the IV-A State plan. We have received a number of questions regarding the period of time referred to in the above provisions. Therefore, we have decided to clarify this matter.

Section 457(c)(1) of the Act and 45 CFR 302.51(e)(1) refer to a period of up to 5 months. Thus, a State that elects to do so in its IV-D State plan may continue to collect current support payments from the absent parent for a period not to exceed the first five months following the last month in which the family received an assistance payment.

Under section 457(c)(1) of the Act and 45 CFR 302.51(e)(1), any amounts collected which represent current support payments must be paid to the family. Any amounts collected during this period in excess of current payments must be used to reimburse unpaid support obligations accrued pursuant to the assignment under 45 CFR 232.11. Any collections which exceed the amount of unreimbursed past assistance must be paid to the family. (See section 457(c) of the Act and 45 CFR 302.51(f).)

For example, under section 457(c) of the Act and 45 CFR 302.51(e)(1):

1. The IV-A agency determines that the family is ineligible for an assistance payment?
2. The family receives its last assistance payment in January.
3. The IV-D agency may continue to collect support payments from the absent parent during the period February through June, if it has elected to do so in its State plan.

You may wish to pass this clarification on to any State in your Region that has questioned the meaning of the time period in section 457(c)(1) of the Act and 45 CFR 302.51(e)(1). If you have any questions, feel free to contact Mike Fitzgerald of my staff at 443-5350.

Fred Schutzman

OCSE-PIQ-83-14
Date: August 2, 1983

From: Deputy Director
Office of Child Support Enforcement

Subject: Policy Question - Applications for Non-AFDC IV-D Services

To: Hugh F. Galligan
Regional Representative
Office of Child Support Enforcement

This is in response to your memorandum of June 14, 1983 regarding applications for non-AFDC IV-D services.

Section 454(6) of the Social Security Act and regulations at 45 CFR 302.33 require that IV-D services be made available to individuals not receiving AFDC upon application. Though neither the Act nor the regulations define exactly what form the application must take, it is clear that an application for services must be executed before the case can be considered a IV-D case.

We have previously accepted a signature on the back of a check (endorsement) preceded by a stamped statement requesting IV-D services as an application. This was an interim procedure permitted to enable States which had large non-AFDC caseloads prior to the enactment of title IV-D to efficiently transfer these on-going cases into the IV-D program.

The practice of obtaining applications by check endorsement does not adequately inform individuals of the services for which they are applying. Consequently, this form of application is limited to those cases that were transferred into the system immediately after the enactment of title IV-D. Applications in all other cases must be obtained on an application form designed for this purpose which adequately sets forth the IV-D program services covered. Also, check endorsement cannot be used in lieu of a formal notice as to changes in the State's cost recovery method.

We do not believe the Audit Division should advise States in these types of matters and will so inform them.

/s/
Fred Schutzman

CC: OCSE Executive Staff

Supersedes OCSE-PIQ-83-14 (attached)

August 11, 1983
SEP 12, 1983

From: Deputy Director
Office of Child Support Enforcement

Subject: Policy Question - Applications for Non-AFDC IV-D Services

To: Hugh F. Galligan
Regional Representative
Office of Child Support Enforcement

This memorandum supersedes PIQ-83-14 which was in response to your memorandum of June 14, 1983 regarding applications for non-AFDC IV-D services.

Section 454(6) of the Social Security Act and regulations at 45 CFR 302.33 require that IV-D services be made available to individuals not receiving AFDC upon application. Though neither the Act nor the regulations define exactly what form the application must take, it is clear that an application for services must be executed before the case can be considered a IV-D case.

We have previously accepted a signature on the back of a check (endorsement) preceded by a stamped statement requesting IV-D services as an application. This was an interim procedure permitted to enable States which had large non-AFDC caseloads prior to the enactment of title IV-D to efficiently transfer these on-going cases into the IV-D program.

The practice of obtaining applications by check endorsement does not provide the individual any option as to whether or not to apply for IV-D services. Consequently, this form of application is limited to those cases that were transferred into the system immediately after the enactment of title IV-D and is not acceptable for new cases. The provisions of OCSE-AT-76-9 regarding what constitutes an application otherwise remain in effect.

Fred Schutzman

cc: OCSE Executive Staff

Date: AUG 15, 1983

From: Deputy Director
Office of Child Support Enforcement

Subject: Disclosure of Information Obtained from IRS

To: Kay Willmoth
Regional Representative
Region V

This is in response to your memorandum dated July 8, 1983 on the above referenced subject. You request policy clarification concerning whether the restrictions on disclosure of information obtained by IV-D from the IRS apply to Medicaid agencies.

PIQ-83-3, dated March l, 1983 contains a policy interpretation issued by the IRS stating that there are no provisions under section 6103 of the Internal Revenue Code (IRC) for information disclosed by the IRS to child support agencies to be further disclosed to State AFDC agencies. In the absence of any IRC provision that specifically permits disclosure to Medicaid agencies, it is our position that the same restriction on disclosure of return information by child support agencies to AFDC agencies applies to Medicaid agencies. The fact that a cooperative agreement exists between the State IV-D agency and the State Medicaid agency does not change the restriction. The IV-D agency must verify through another source any information obtained from IRS records before disclosing this information to any other agency.

The statement in OCSE-IM-81-8 that child support agencies shall make available to Medicaid agencies the resources of the State and Federal PLS to locate absent parents who have Medicaid eligible children is erroneous only with regard to information obtained from the IRS. Since this memorandum clarifies the policy stated in OCSE-IM-81-8, we do not believe it is necessary to revise the IM itself.

Fred Schutzman

cc: OCSE Executive Staff

Date: JUL 8 1983

From: Regional Representative
OCSE, Region V

Subject: Disclosure of Information Obtained from IRS

To: Fred Schutzman
Deputy Director
Office of Child Support Enforcement

Statement of Problem:

The IRS has ruled that tax information disclosed to child support enforcement agencies, in addition to being subject to strict safeguards may not be used in litigation, and may not be divulged to third parties. If the Title XIX agency, specifically the unit under agreement to implement a medical support enforcement program, is considered to be a third party, then absent parent address and employer information secured from IRS may not be shared with the Medicaid office under the OCSE suggested Phase 1 - Mailing List Exchange as outlined in OCSE-lM-81-8.

Citation of Laws, Regulations and Other Applicable Policy

Statements:

26 U.S.C. 6103

OCSE - PIQ-83-3

Questions:

1. Since 26 U.S.C. 6103 does not permit State IV-D agencies to disclose information obtained from the IRS to the State IV-A agency, would the same restriction also apply to the Title XIX agency, specifically for medical support enforcement activities?

2. If a cooperative agreement is executed between the State IV-D agency and the State XIX agency to implement a medical support enforcement program in accordance with 45 CFR Part 306, would the restriction apply?

Proposed Resolution:

Since the use and disclosure of this information is governed by the IRS under 26 U.S.C. 6103, OCSE should request an opinion regarding this matter from IRS.

Kay Willmoth

OCSE-PIQ-83-16
October 5, 1983

From: Deputy Director
Office of Child Support Enforcement

Subject: Collecting Interest via Federal Tax Refund Offset

To: OCSE Regional Representatives
Regions 1-X

In response to inquiries regarding whether interest charges can be included in amounts referred for Federal tax refund offset, we reviewed this issue with the IRS. A copy of their response is attached. Pursuant to the IRS response, OCSE policy is as follows:

For purposes of Federal tax refund offset, past-due support is defined in 45 CFR 303.72(a) as "The amount of support, determined under a court order or an order of an administrative process established under State law, for support and maintenance of a child or of a child and the parent with whom the child is living, which has not been paid."

As such, interest may only be included in amounts referred for offset if the payment of interest is specified in the court or administrative order for the care and maintenance of the child or of the child and parent. Interest which accrues automatically under State law does not qualify as past-due support for purposes of refund offset.

If you have any questions on this issue, please contact: Carol Jordan, OCSE Policy Branch at (301) 443-5350.

Fred Schutzman

Attachment

Department of Health and Human Services
Office of Child Support Enforcement
Rockville, MD 20852

Mr. Norlyn D. Miller
Telephone Number:
(202) 566-3466
In Reply Refer to:
:IND:E:1:3 - 3E9928

Date: 25 Aug 1983

Attn: Mr. Fred Schutzman

Dear Sir:

This is in further reply to your letter of May 17, 1983, to Mr. James Malloy in which you question whether interest accruing under state law on past-due support may be recovered by offset from federal tax refunds pursuant to section 6402(c) of the Internal Revenue Code.

As explained to Ms. Jordon of your staff on June 8, 1983, we do not believe that interest accruing automatically under state law on past-due support amounts is collectible by the Internal Revenue Service under section 6402(c).

Section 6402(c) requires the Secretary of the Treasury or his delegate to reduce the amount of any overpayment to be refunded a person making an overpayment by the amount of past due support.

Section 301.6402-5(b)(1) of the Regulations on Procedure and Administration, which was published in the Federal Register on May 20, 1983, defines past-due support as the amount of a delinquent obligation which amount was determined under a court order, or an order pursuant to an administrative process established under State law, for support and maintenance of a child or of a child and the parent with whom the child is living.

It follows that unless the payment of interest is part of the court order or administrative order, it cannot qualify as past due support and is not collectible by the Internal Revenue Service under section 6402(c).

Should you require further assistance from our office,we will be pleased to furnish it.

Sincerely yours,
E. L. Kennedy
Chief, Estate & Gift, Excise, Administrative Provisions, and Governmental Obligations Branch

OCSE-PIQ-84-01

Date: FEB 7 1984

From: Deputy Director
Office of Child Support Enforcement

Subject: Request for Policy Interpretation:
Disclosure of Full Consumer Reports to IV-D Agencies

To: Ms. Ruthie Jackson
OCSE Regional Representative
Region X

You wrote us on May 27, 1983 requesting a policy interpretation on the use of full consumer reports by IV-D agencies when the child support obligation is established by administrative process (TAB A). Specifically, you reported that the State of Washington was negotiating a contract with Credit Bureau Inc. (CBI) to obtain credit information on absent parents. During the course of the negotiations there was a disagreement between CBI and Washington State as to whether or not a full consumer report could be obtained by IV-D agencies under the Fair Credit Reporting Act (FCRA) when collecting a child support debt established under an administrative process rather than a court process.

The Federal Trade Commission (FTC) previously had approved the receipt of full consumer reports by IV-D agencies after a support obligation for a specific monetary amount was established. The FTC, in a letter dated July 26, 1979, stated that a "child support agency has a permissible purpose for receiving a consumer report under section 604(3)(A)[15 USC 16816(3XA)] when it will use the report to collect child support enforcement payments pursuant to an existing court order." We interpreted this to mean that IV-D agencies can receive full consumer reports under section 604(3)(A) of the FCRA to collect child support established by administrative process as well. CBI interpreted this to mean that a support obligation must be established through the State's court system for a IV-D agency to receive a full consumer report.

To resolve the conflict in interpretation, we wrote the FTC on October 25,1983 (Tab B). The FTC responded on December 2, 1983 supporting our interpretation (Tab C). Thus, IV-D agencies may access full consumer reports on absent parents when the child support obligation is established by administrative process or by court process.

If you have any further questions in this matter, please contact Marianne Rufty of my staff on (301-443-5350).

Fred Schutzman

Attachments

cc: Executive Staff
Regional Representatives

OCSE-PIQ-84-02

February 15, 1984

From: Deputy Director
Office Of Child Support Enforcement

Subject: Policy Interpretation Question: Bankruptcy and the IRS Collection Programs

To: Executive Staff

In a letter to us dated April 29, 1983 (Tab A), the IRS confirmed that their Service Centers apply the provisions of the automatic stay in bankruptcy to the tax refund offset and full collection processes when certain conditions exist. Such conditions mainly concern the timing of various elements in those processes as they relate to the timing of the bankruptcy process. These dates determine if ani individual's property is subject to the provisions of the stay or if it is immediately available to satisfy an outstanding support debt. In a tax refund case, if an individual's property is subject to the provisions of the stay (the refund is considered property of the estate), the IRS cannot offset until the stay is lifted. In a full collection case, if an individual's property is subject to the provisions of the stay, the IRS must file a "proof-of-claim" to collect the obligation. Generally, if the refund or other property is exempted from property of the estate or is considered to be after-acquired property, offset or full collection may be accomplished immediately unless the property is being used to fund a Chapter 13 repayment plan.

The IRS letter is very detailed and complex, therefore
we have summarized the contents at Tab B. IRS has reviewed and approved our summation.

Because the effect of bankruptcy provisions on full collection and offset processes are complex, you should advise States to handle these cases carefully. If you need further interpretation or assistance, contact your regional attorney.

Fred Schutzman

Attachments

DEPARTMENT OF HEALTH & HUMAN SERVICES
Office of Child Support Enforcement

Date: December 20, 1985

From: Office of Child Support Enforcement

Subject: Policy Interpretation Questions: Notice of Collection of Assigned Support

To: Executive Staff

This is in response to questions raised at the Executive Staff meeting held during the week of October 18, 1985 regarding the notice of collection of assigned support.

Effective October 1, 1985, section 454(5) of the Act and the implementing regulations at 45 CFR 302.54 require that a State provide an annual notice of the amount of support collected during the past year to individuals who have assigned rights to support under §232.11. Under these provisions, the State must send an annual notice to each current AFDC recipient even if no collection was made during the past year. In addition, the State must send an annual notice to each former AFDC recipient whenever a collection was made on assigned arrearages during the past year. Under §302.54(b), the notice must list separately support payments collected for each absent parent when more than one absent parent owes support to the family and indicate the amount of support collected which was paid to the family.

OCSE-PIQ-84-03
Date: Oct 16 1984

From: Deputy Director
Office of Child Support Enforcement

Subject: Payment for Blood Tests in Interstate Cases

To: Executive Staff

This is in response to several memoranda from Regions III, IV and VII requesting policy clarification regarding costs of processing interstate cases, particularly in reference to costs for blood testing.

The memoranda include documentation of instances where States are attempting to recover costs for blood testing from the initiating State or are refusing to take action to establish paternity unless the initiating State first pays the blood testing costs. These actions are contrary to OCSE policy requiring the responding State to pay the costs for blood tests in interstate cases.

As stated in the attached memorandum dated October 31, 1983 from OCSE to Region IX, the State plan requirement at section 454(9) of the Act and implementing regulations at 45 CFR 302.36 require each State to cooperate with other States by providing IV-D services in interstate cases. Under these provisions, a State must pay the costs of services provided to cases referred from other States as they would pay such costs for their own cases. These provisions mandate consistent treatment of all IV-D cases regardless of whether the case originated in the State or was referred from another State.

In the proposed regulations implementing the Child Support Enforcement Amendments of 1984, there are two provisions that specifically encourage States to work interstate cases as they would intrastate cases. Proposed regulations at 45 CFR 303.52(b)(4)(ii) provide that, in computing incentives, both the responding State and the initiating State receive credit for collections made on interstate cases. Paragraph (b)(4)(iv) of the same section would allow States to exclude laboratory costs incurred in determining paternity from their total IV-D administrative costs for the purpose of computing incentives.

Please make sure the States are made aware of this policy and understand that they may not refuse to take further action on a case because the initiating State will not pay the cost of blood testing and other services.

Fred Schutzman

Attachment

OCSE-PIQ-85-01

FEB 8 1985

Deputy Director
Office of Child Support Enforcement

Policy Interpretation Question--FFP in costs of Purchased Telephone and Furniture Systems

Regional Representative
Region VI

This is in response to your request on above subject dated September 26, 1984.

Question 1. Do acquisitions require Federal grantor agency prior approval?

Answer: As noted in your memo, Circular A- 87, Attachment B, Section c.3 states, The cost of facilities, equipment, other capital assets, and repairs which materially increase the value or useful life of capital assets is allowable when such procurement is specifically approved by the Federal grantor agency". In practice this provision has not proven sufficient to sustain a disallowance when prior approval was not received but would have been granted if it had been requested. For this reason, and because review of all such capital expenditures would inundate most regional offices, OCSE waived this requirement in accordance with 45 CFR 74.177. However, OMB Circular A-87 provides sufficient authority for the regional office to establish criteria requiring prior approval of capital expenditures. We encourage you to do so if criteria can be established which treat your States equally and fairly without creating an unmanageable workload for either you or the States.

Question 2a. How is "unit cost" of a telephone system or modular furniture determined?

Answer: The definitions provided at 45 CFR 95.703 for both "acquisition costs" and "equipment" apply to this question. Care should be taken to identify the "unit" being purchased correctly. In this instance, the State is purchasing a telephone system; therefore, all parts and pieces required to provide an operational system must be included in the unit price. Chairs and tables may be considered separately from the telephone system.

Likewise, replacement parts purchased subsequent to the installation of the system have their own unit cost.

Question 2b. Would the State Office system be a separate unit from a Field Office system?

Answer: Yes, to the extent that they are separate procurements and/or installation of one system is not dependent on the other.

Question 2c. If all offices' systems are acquired during the same or continuous time perIod, is it proper for each unit's procurement to be broken down so as to fall below the threshold?

Answer: Time of procurement is not the governing factor in the determination of unit cost. If a grantee purchases 5 chairs at one time, the unit price is the cost of one chair. It would not be proper to identify the unit price of rollers, screws, etc., which are inherent parts of the chair unless they were purchased as replacement parts. Likewise, the procurement of a telephone system must identify the unit being procured. Is the Field Office System an integral part of the State Office System? If not, then two "units" are being, purchased. Is an interface being purchased such that the "system" is not complete until both systems are operational? If so, there is only one "unit".

Question 3. What equipment requirements for property records apply to equipment of this nature?

Answer: 45 CFR 92. 707 describes equipment management requirements.

Question 4. The agreement (between the State IV-D agency and the agency administering the program) does not address the requirements of 45 CFR 95.705 (b)(1). How does this situation affect the questions above?

Answer: 45 CFR 95.7O5 (b)(l) states that all equipment purchased under a service agreement with other State agencies shall be depreciated. However if the equipment has a unit acquisition cost of $25,000 or less the cost may be claimed in the period acquired if: (a) the State agency approves it; and (b) the agreement requires that the equipment or its residual value be transferred to the State agency when the equipment is no longer needed to carry out the work of the agreement. Therefore, not withstanding the answers to the previous questions, if the provision required by 45

CFR 95.705 (b)(1) is not included in the agreement, the $25,000 threshold is irrelevant and all equipment purchases must be depreciated.

The questions raised relative to this issue are very timely and are of concern beyond OCSE. We have worked with the Department on this response and asked them to review this problem and consider developing a department wide policy on paying for telephone systems.

Fred Schutzman

cc: OCSE Executive Staff

OCSE-PIQ-85-02

Date:February 19 ,1985

From Deputy Director
Office of Child Support Enforcement

Subject Policy Interpretation Question: Pass-Through of AFDC Collections to Families

To Executive Staff

This is in response to a memorandum from Region VII dated January 9,1985, regarding whether a State may establish a threshold below which it would not pay the first $50 of support collected in a month to the AFDC family.

The State must pay the AFDC family any amount collected up to the first $50 of support collected. Section 2640 (b) of the Deficit Reduction Act of 1984 amends section 457(b) of the Social Security Act to require that the first $50 of monthly support payments shall be paid to the family. Therefore, the State must issue a check for an amount up to the first $50 of support collected pursuant to section 457(b), regardless of the amount collected. There is no authority in the statute to allow States to establish thresholds below which no check would be issued.

Fred Schutzman

OCSE-PIQ-85-03
Date: March 7, 1985

From: Deputy Director, OCSE

Subject: Policy Interpretation Question: Distribution of Collections Following AFDC Termination

To: Executive Staff

This is in response to Region VIII's memorandum dated February 8, 1985, regarding the distribution of collections following AFDC termination. As noted in the memorandum, the intent of the Child Support Enforcement Amendments of 1984 is to pursue non-AFDC support enforcement activities as effectively and energetically as AFDC support enforcement activities.

The new statute requires States to continue to provide IV-D services for up to five months after a family is terminated from AFDC. During this mandatory service period, any amounts collected which represent current monthly support payments for this period must be paid to the family. Amounts collected during this period in excess of the current payments for this period are used to reimburse the State for AFDC payments made to the family. If continued services are authorized after this mandatory service period, the State may apply amounts collected in excess of the current monthly support obligation either to the family first or to unreimbursed AFDC payments first, depending upon how the State distributes arrearage collections in non-AFDC cases.

AddItional information will be forthcoming in the final regulations implementing the Child Support Enforcement Amendments of 1984.

Fred Schutzman

OCSE-PIQ-85-04
Date: APR 17 1985

From: Deputy Director
Office of Child Support
Enforcement

Subject: Policy Interpretation Question; Recoupment of the $50 Payment to the AFDC:Family under the IV-D Recovery Method

To: Executive Staff

This is in response to a memorandum from Region VII of March 15, 1985 requesting a policy interpretation on how the IV-D agency should account for the $50 payment to the AFDC family required in section 457(b) of the Act when recouping a retained direct payment by the IV-D recovery method prescribed at 45 CPR 303.80.

Effective October 1, 1984, section 2640(b) of the Deficit Reduction Act amended section 457(b) of the Act to require a State to pay the first $50 of support collected on the monthly support obligation to the AFDC family. Therefore, despite the fact that an AFDC recipient retained a direct payment that must be recovered, effective October 1, 1984, the State must ensure that the AFDC family receives the $50 payment for each month in which a direct payment is made. The State may not recover retained direct payments by withholding $50 payments.

Regulations at 45 CPR 303.80(d) require the IV-D agency to enter into a repayment agreement with an AFDC recipient to recover a retained direct payment. These regulations do not specify how States should account for the $50 payment to the AFDC family. Therefore, States have flexibility to select any method that accounts for the $50 payment specified at section 457(b) of the Act and Interim final regulations at 45 CFR 302.51 as long as the repayment agreement which is signed by the AFDC recipient addresses the accounting and disposition of the $50 payment(s).

If you have further questions, please let me know.

Fred Schutzman

cc: Madeline Mocko, OFA

OCSE-PIQ-85-05
04-30-85

Deputy Director
Office of Child Support
Enforcement

Policy Interpretation Question: Restatement of Policy Contained in PIQ-84-03 Entitled "Payment for Blood Tests in Interstate Cases"

Executive Staff

We continue to receive inquiries from the Regional Offices concerning responsibility for paying the costs for blood testing in interstate cases. In one such case, Region VIII recommended that the initiating State be responsible for obtaining blood samples from the parties residing in the initiating State as well as paying the costs of drawing blood from those individuals.

Our policy in PIQ-84-03 dated October 16, 1984, requires responding States to bear the costs of blood testing in interstate cases. We continue to require responding States to pay for blood testing costs in interstate cases. However, if an initiating State assumes responsibility for and incurs costs of blood testing, we will reimburse the initiating State for any expenditures incurred at the applicable Federal matching rate.

Fred Schutzman

OCSE-PIQ-85-06

Date: MAY 30 1985
From: Deputy Director
Office of Child Support Enforcement

Subject: Equal Enforcement Services for Welfare and Non-Welfare Families~

To: Ruthie Jackson
OCSE Regional Representative
Region X

This is in response to your memorandum dated May 2, 1985 regarding the provision of enforcement services in AFDC and non-AFDC cases.

Section 454(6) of the Act requires that a State plan for child support must provIde that the support collection and paternity determination Services established under the plan be available to any individual not otherwise eligible for such services upon application filed with the State. Under this provision, the State IV-D program must provide equal IV-D services (e.g., enforcement services) to AFDC and non-AFDC cases. Although enforcement services provided to AFDC and non-AFDC cases do not have to be identical, the services provided must produce the same results.

Section 2 of P.L. 98-378, the Child Support Enforcement Amendments of 1984, amended section 451 of the Act to assure that assistance in obtaining support will be available under title IV-D of the Act to all children (whether or not eligible for AFDC) for whom IV-D services are requested. In discussing this amendment, the House and Senate reports on H.R. 4325 clearly indicate that the Department of Health and Human Services and the States must fully implement the provision in the law (i.e., section 454(6) of the Act) that requires the States to make available to non-AFDC families the services that are provided under the State IV-D program to AFDC families.

Since the inception of the IV-D program, we believe that section 454(6) of the Act and the implementing regulations at 45 CFR 302.33 have required the States to provide equal IV-D services for AFDC and non-AFDC cases. Under these provisions, the States must provide any necessary and appropriate services on a IV-D case regardless of whether the specific services were requested by the obligee. We believe that the intent of section 2 of the new law is to reinforce these requirements.

Fred Schutzman

OCSE-PIQ-85-07
SEP 26, 1985

Deputy director
Office of Child Support
Enforcement

Policy Interpretation Question: Designation of a Public Agency to Administer Wage Withholding

OCSE Regional Representative
Region X

This in response to your memorandum of August 27, 1985 in which you ask several questions about the limitation in 45 CFR 303.100(e)(1) that there be only one designated entity to administer wage withholding in each jurisdiction. The answers to your questions are as follow:

1. Question: What is meant by the phrase in 45 CFR 303.100(e)(1) that says, "The State may designate only one entity to administer wage withholding in each jurisdiction."?

   Response: Section 466(b)(6) of the Social Security Act requires withholding to be administered by a public agency designated by the State and amounts withheld to be expeditiously distributed by the State or withholding agency in accordance with procedures adequate to document, track and monitor payments of support. Alternative procedures for collection and distribution of payments are allowable if the withholding entity is publicly accountable and the procedures will assure prompt distribution, adequate records to document payments of support and tracking and monitoring of the payment.

   The statute does not require the withholding agency to perform all functions connected with withholding. Functions such as determining that the triggering arrearage has been reached and providing advance notice and opportunity to contest may be performed by the withholding agency, the IV-D agency, or other entity under contract with the IV-D agency. The statute requires that the withholding agency be responsible for collecting, documenting, tracking, monitoring and distributing of payments made by withholding.

   Our proposed rule published September 19, 1984 restated the statutory requirement (see 49 FR 36803). In response to comments received on the proposed §303.100 (e)(1), we revised the provision to specify that a State may designate public or private entities to administer withholding on a State or local basis under supervision of the State withholding agency if the entity or entities are publicly

accountable and follow the States-specified procedures. This responded to concerns that States were limited by the proposed language to designating one statewide withholding agency.

We further specified in the final rule that the State may only designate one entity to administer withholding in each jurisdiction. This is clearly consistent with congressional intent, in the statute itself and in the conference report, that the State establish methods to simplify the withholding process for employers to the greatest extent possible, including allowing the employer to combine withheld amounts into a single payment to the appropriate agency (see section 466(b)(6)(B) of the Act and H.Rep No. 98-925, p.33). Allowing only one withholding agency or designee per jurisdiction eliminates the need for employers to make payments to more that one agency or entity within the jurisdiction, thereby simplifying the process. This regulation means that, within one jurisdiction, there may only be one entity responsible for receiving, documenting, tracking, monitoring and distributing payments made by wage withholding.

2. Question: May the designated local wage withholding entity redelegate or contract out the wage withholding function to another agency or private entity? Would it make a difference if that redelegation or contracting out causes duplication of effort?

Response: The local wage withholding agency responsible for administering wage withholding in the jurisdiction may redelegate or contract out all or part of the functions for which it is responsible to another agency or private entity. For example, a local withholding agency may not enter into a contract with more than one bank or other entity in its jurisdiction to perform these same functions so as to require employers within the jurisdiction to send payments to more than one collection point. The redelegation or contract to perform these functions may not cause duplication of effort or the establishment of two systems which is contrary to the concept of one withholding agency or entity within each jurisdiction.

This would not preclude a State or local IV-D agency from entering into a cooperative agreement with the courts or other entity to send notice to absent parents on the trigger date for withholding and provide hearings for certain IV-D caseloads, while sending notice and providing hearings itself for other caseloads. These are not required functions of the withholding agency. In general, we do not prohibit States from establishing dual systems for providing services to different IV-D caseloads, for example AFDC and non-AFDC or instate and interstate caseloads, as long as the same services are provided in all IV-D cases. However, this

practice is prohibited with respect to those wage withholding functions for which the designated withholding agency is required by statute and regulations to be responsible.

3. Question: Are there specific functions that the designated local wage withholding agency may or may not contract out?

   Response: The designated local withholding agency may contract out any or all withholding functions. However, if the withholding agency contracts out the receiving documenting, tracking, monitoring or distributing functions, the contractor must perform those functions for all IV-D cases subject to withholding in the jurisdiction.

4. Question: Would the Regional Office be correct in disallowing funds for cooperative agreement expenditures that support duplicate wage withholding systems in local jurisdictions; systems which provide the same service but work with different caseloads (i.e., intrastate and interstate)?

   Response: Yes, but only with respect to the receiving, documenting, tracking, monitoring and distributing functions. The requirement that there be only one entity to administer withholding in each jurisdiction would prohibit Federal funding of duplicate withholding systems with respect to these functions for different caseloads. To reiterate, allowing only one wage withholding agency in each jurisdiction to conduct these specified functions is intended to minimize the burden placed on employers in complying with wage withholding notices.

OCSE-PIQ-85-08
Date: November 26, 1985

From: Office of Child Support Enforcement

Subject: Policy Interpretation Question: Liens on Personal Property in Kansas, Missouri and Nebraska

To: OCSE Regional Representatives
Region I-X

This is in response to your memorandum of November 15, 1985 asking for our review of Kansas, Missouri and Nebraska legislation on personal property liens. The answer to your question is as follows:

Question: Does the language of these State statutes satisfy the requirements of 45 CFR 303.103, Procedures for the imposition of liens against real and personal property?

Response: The regulation at 45 CFR 303.103(a) requires States to have in effect and be using procedures requiring the imposition of liens against real and personal property of an absent parent owing overdue support. Kansas, Missouri and Nebraska have proposed or enacted legislation allowing for imposition of liens against specifically identified types of personal property (all registered or titled personal property for which a recorded title is available for the lien to attach). Each State, in addition, has attachment procedures for all other personal property and separate statutes governing real property liens.

Based on the above, we agree that these States would meet the requirements of §303.103 and do not require either an authority or an operational exemption.

OCSE-PIQ-86-01

Date: June 10, 1985

To: Thomas DePippo
Regional Representative
Region II

From: Deputy Director for Policy,
Program and Audit

Subject: Computation of Interest Income on Title IV-D Collections

This is in response to your memorandum of May 23, 1986 asking for OCSE's policy regarding the period for which interest earned on IV-D collections must be calculated to reduce administrative expenditures.

In your memorandum, you described the Departmental Grant Appeals Board's recent decision on an appeal by Utah concerning interest income earned but not credited against expenditures. Although upholding OCSE's policy stated in our June 22, 1983 memorandum to you that interest income must be credited against State IV-D expenditures, as required under section 455(a) of the Social Security Act and 45 CFR 304.50, the Board questioned the validity of OCSE's policy that, in AFDC cases, interest must be calculated from the date of collection until the date the Federal government receives the IV-A quarterly expenditure report that reduces State IV-A expenditures by the net Federal share of IV-D AFDC collections.

We have reconsidered our policy on this matter as a result of the Board's decision. Total interest income earned on IV-D collections at the State or local level during each quarter must be reported on line 3 of Form OCSE-41 to reduce IV-D expenditures for the quarter. This would require States to be able to distinguish interest earned on IV-D collections from interest earned on other funds. In those instances where interest was not reported for periods prior to the date of this memorandum, interest may be calculated from the date the collection is deposited in an interest-bearing account at the State or local level to the end of the quarter for which the collection is reported on the IV-A expenditure report. The memorandum of June 22, 1983 is hereby superseded.

Attachment

cc: OCSE Regional Representatives
Regions I, III-X

OCSE-PIQ-86-02
Date: June 27, 1986

To: Thomas DePippo
Regional Representative

From: Deputy Director for Policy, Program and Audit
Office of Child Support Enforcement

Subject: Provision of Wage Withholding and Other IV-D Services to Non-IV-D Cases

This is in response to your memorandum of April 16, 1986 regarding the provision of wage withholding and other IV-D services to non-IV-D cases. You ask whether a State or local IV-D agency, in order to comply with section 466(a)(8) of the Social Security Act and 45 CFR 303.1OO(h), may provide wage withholding services to non-IV-D cases. In addition, you ask whether the IV-D agency may provide additional services such as State income tax refund offset to non-IV-D child support cases. Finally, you ask if the IV-D agency may provide any services to "spousal support only" cases.

At the inception of the IV-D program in 1975, Congress made clear in section 454(3) of the Act that a State's IV-D plana must "provide for the establishment or designation of a single and separate organizational unit...within the State to administer the plan." A "single" organizational unit is one which performs only one function - child support enforcement. Congress intended that State IV-D agencies develop an expertise in establishment and enforcement of child support obligations and specialize in the provision of child support services. In addition, OCSE policy until enactment of the 1984 Amendments had been that the IV-D agency's child support enforcement activities be devoted exclusively to IV-D cases.

The Child Support Enforcement Amendments of 1984 made two significant changes to title IV-D of the Act. First, section 466(c) of the Act allows States to have in effect and use procedures for the payment of support through the State IV-D agency, or the entity designated by the State to administer the State's withholding system, upon the request of either the custodial or absent parent. If the State elects to offer this service, it must charge a fee not to exceed $25.00 for handling and processing such payments. It is clear that such a case, although involving child support, is not a IV-D case and that Federal funding is not available for costs associated with tracking and monitoring these non-IV-D cases. House Report No. 98-527, p. 40, states: "The Committee believes that the costs associated with such voluntary use should be borne by the party requesting the service and not the taxpayer. This statutory change clearly authorizes the IV-D agency to provide a IV-D service, tracking and monitoring, to non-IV-D cases.

Second, section 466(b)(8) of the Act provides that all new or

modified support orders issued in the State include a provision for wage withholding when an arrearage occurs. The intent of this section is to ensure that withholding is available without the necessity of filing an application for IV-D services. States are free to establish the conditions and procedures to be applied in non-IV-D cases, and may adopt identical procedures for IV-D and non-IV-D cases. It now appears that many States also wish to use the IV-D agency itself, or the entity designated by the State to administer IV-D withholding, to administer these non-IV-D withholding cases.

We believe these statutory changes necessitate a change in our policy that IV-D agency activities be devoted exclusively to IV-D cases. It continues to be our position that, to be consistent with requirements for a single and separate organizational unit, the IV-D agency must perform only one function - child support enforcement, in keeping with Congressional intent. However, as a result of the changes made by the 1984 Amendment discussed above, a IV-D agency may provide wage withholding services in non-IV-D cases as long as the State allocates the costs and collections between IV-D and non-IV-D cases. Non-IV-D wage withholding costs are not eligible for FFP, and collections in non-IV-D cases cannot be counted for the purpose of computing incentives.

The IV-D agency may also provide any other child support enforcement services to non-IV-D cases subject to the same conditions cited above regarding allocation of costs, FFP and incentives. However, the IV-D agency may only provide child support enforcement services, which include collection of spousal support if a support obligation has been established for the spouse and the child support obligation is being enforced under the title IV-D State plan, in accordance with 45 CFR 3O2.31(a)(2). Therefore, the IV-D agency nay not provide services in other areas such as student loan collections or "spousal support only" cases because child support is not at issue.

OCSE-PIQ-86-04
DATE: December 19, 1986

MEMORANDUM

FROM: Deputy Director
Office of Child Support Enforcement

SUBJECT: Treatment of Interest Earned on Title IV-D Collections

TO: Regional Representatives
Office of Child Support Enforcement

As you are aware, section 455(a) of the Social Security Act requires States to reduce their title IV-D program expenditures by any earned income resulting from services provided under the IV-D State plan. This provision, enacted under P.L. 97-35, became effective on October 1, 1981. OCSE regulations at 45 CFR 304.50 require the IV-D agency to reduce its quarterly expenditure claims for Federal IV-D funding by all interest and other income earned during the quarter resulting from services provided under the IV-D State plan. OCSE issued PIQ-86-I on June 10, 1986 regarding the computation of interest earned on IV-D collections and the period for which the interest must be calculated.

It has come to our attention that some States have not been fully complying with these requirements, including one instance where no adjustments were made since October 1, 1081.

Please determine whether each of the States in your region is complying with this requirement and report any problems so that appropriate action can be taken. If you have any questions regarding this issue, please contact Craig Hathaway, (301) 443-5350.

OCSE-PIQ-87-01

Date: AUG 6, 1997

From: Associate Deputy Director
Office of Child Support Enforcement

Subject: Acceptability of Case Law to Address Mandatory Provisions of P.L. 99-509.

To: Alexander W. Porter
Regional Representative, Region III

This is in response to your memorandum of July 21 asking whether the provisions of Public Law 99-509 could be addressed by court rule. The answer to your question is yes, conformity with these statutory requirements may be achieved through applicable case law.

You may wish to note that for purposes of State plan approval, as indicated in the attached OCSE-AT-86-19, a State must attach a copy of the State law or court rule to the State plan preprint page when it is submitted for approval.

If you have any further questions on this matter, please contact the Policy and Planning Division at 245-1985.

Robert C. Harris

Attachment

cc: Regional Representatives
JUL 21, 1987

From: Regional Representative
FSA/OCE/Region III

Subject: Acceptability of Case Law to Address Mandatory Provisions of P.L. 99-509

To: Robert Harris, Associate Director
Family Support Administration, Office of Child Support Enforcement

We are requesting your guidance on whether States can rely upon case law as a basis for addressing the provisions of P.L. 99-509 with respect to the retroactive modification of support arrearages. You will recall that State implementation of the 1984 amendments contained in P.L. 98-378 could be addressed in one of three ways -- legislation, court rule, or administrative regulation reflecting official policy. Do these forms of implementation apply to P.L. 99-509 as well, or is case law a permissible basis for achieving conformity?

Our question relates to the District of Columbia, which has introduced but not yet enacted legislation addressing retroactive modification. The District was to have implemented this provision by April 1, 1987 and to have forwarded the necessary State Plan amendment to the Regional Office by June 30. We are in receipt of the required State Plan material, which cites case law as documentation of compliance with federal requirements. Our Regional Counsel is of the opinion that the District's case law does address all of the provisions required by P.L. 99-509. However, the issue of the acceptability of case law in lieu of legislation must be addressed prior to our action on the State Plan amendment.

Your assistance in this matter is appreciated.

Alexander W. Porter

cc: David Smith
Micheal Leonard

July 8, 1987

From: Office of the General Counsel
Region III

Subject: District of Columbia - Compliance with Pub. L. 99-509

To: Alexander W. Porter
Regional Administrator
Family Support Administration

We have reviewed the District of Columbia case law for conformity with the requirements of Pub. L. 99-509, which requires States to prohibit the retroactive modification of child support orders. For the reasons discussed below, we disagree with the conclusions set out in the Legislative Analysis Checklist prepared by your staff finding non-conformity with these requirements.

In the leading case, Kephart v. Kephart, 193 F.2d 677 (1951), cert. denied, 342 U.S. 944 (1952), the appellate court, en banc, overruled prior inconsistent case law in holding that:

> We conclude, therefore, that the District Court here cannot modify or remit installments of alimony after they have become due by the terms of the original judgment which ordered their payment. When a decree awards alimony payable in future installments, the right to each installment becomes absolute and vested when it becomes due, provided no modification of the decree has been made prior to its maturity. Each installment which matures under a decree which has not been modified becomes a judgment debt similar to any other judgment for money. The original decree is final in character with respect to each matured installment and so cannot be challenged here . . . .

Kephart, 193 F.2d at 684. The court's conclusion establishes that a trial court cannot modify or rescind past due support because the right to receive such payments is "absolute and vested" when each payment becomes due. Id. 1/ Kephart did not prohibit prospective modification of support orders but

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1/ The "alimony" referenced in the case consisted of both child support and spousal support, Kephart, supra, at 679; subsequent cases involving only child support have acknowledge that the rule in Kephart is binding as well in cases of orders for child support only. See, e.g., Smith v. Smith, 427 A.2d 928 (D.C. App. 1981).

subsequent cases have held that, while a court may prospectively increase or decrease a support obligation, it can be no earlier than the date of filing and service of a petition for modification. Smith v. Smith, 427 A.2d 928, 931 (D.C. App. 1981.) 2/

The District of Columbia thus prohibits retroactive modification of child support arrearages, at least prior to the filing of a petition for modification, and provides that such arrearages are, by operation of law, a collectable judgment. Hence, we conclude that the requirements of Pub. L. 99-509 are met.

Bevery Dennis, III
Chief Counsel, Region III

By:_____
Michael Leonard
Assistant Regional Counsel

cc: Robert Keith
GC:FS/HDS

Control No. CSE 87-11
File Code SS-240

2/ Smith, citing Kephart, also held that each accrued, unpaid support installment is a collectable debt and that a court cannot retroactively modify the sum owing even if the debt had not formally been reduced to a money judgment. In other words, by operations of law, the debt is considered to be a final, collectable judgment.

OCSE-AT-86-19
Dec. 10, 1986
Subj: Revision to the Title IV-D State Plan Preprint--
Retroactive Modification of Child Support Arrears

PLAN PREPRINT

ACTION TRANSMITTAL
OCSE-AT-86-19
December 10, 1986

SUBJECT: Revision to the Title IV-D State Plan Preprint --
Retroactive Modification of Child Support Arrears

TO: STATE AGENCIES ADMINISTERING CHILD SUPPORT ENFORCEMENT PLANS APPROVED UNDER TITLE IV-D OF THE SOCIAL SECURITY ACT AND OTHER INTERESTED INDIVIDUALS

BACKGROUND: Section 9103 of the Omnibus Budget Reconciliation Act of 1986 (P.L. 99-509) adds a new paragraph (9) to section 466(a) of the Social Security Act which requires States to have in effect laws that prohibit the retroactive modification of child support arrears. Specifically, section 9103 requires that any payment or installment of support under any child support order, whether ordered through the State judicial system or through the expedited processes, is, on and after the date it is due, a judgment by operation of law, with the full force, effect, and attributes of a judgment of the State, including the ability to be enforced. Such judgments must be entitled to full faith and credit in such State and in any other State. Further, section 9103 provides that such judgment is not subject to retroactive modification by the enacting State or any other State. The one exception to this provision is that a State may permit modification with respect to any period during which there is a pending petition for modification, but only from the date that notice of such petition has been given, either directly or through the appropriate agent, to the obligee or (where the obligee is the petitioner) to the obligor.

The effective date of this statute is October 21, 1986. However, under section 9103 (b) (2) of P.L. 99-509, if a State demonstrates to the Secretary, HHS, that State legislation is required to conform the State IV-D plan to the requirements of this statute, a delay based on the need for legislation may be granted.

ATTACHMENT: New State plan preprint page 2.12-9

REFERENCES: Section 9103 of P.L. 99-509

OCSE-AT-85-11 dated July 9, 1985, which contains instructions for requesting approval of a delay in implementing mandatory provisions under section 466 of the Social Security Act.

ACTION REQUIRED: States must fill in and submit the attached State plan preprint page and any necessary attachments to the appropriate OCSE Regional Office no later than December 31, 1986. If a State does not require a delay based on the need for legislation, the State must check the first block of State plan preprint page 2.12-9, indicating that it has laws in effect to implement the requirements of section 9103 of P.L. 99-509 and attach a copy of all State statutes or court rulings having the force of law which implement this Federal statute. States may request approval of a delay in implementing section 9103 of P.L. 99-509 due to the need for legislation by completing the second block of the State plan preprint page 2.12-9. States must submit the legal basis for the delay, including references to all applicable State laws and appellate court decisions, as an attachment. States that wish to delay the effective date of the requirement must indicate when implementation will take place. The date indicated must be no later than the beginning of the fourth month beginning after the end of the first session of the State's legislature which ends on or after October 21, 1986. The statute defines a session of a State's legislature as including any regular, special, budget or other session of a State legislature.

INQUIRIES TO: OCSE Regional Representatives

Deputy Director
Office of Child Support Enforcement

STATE

Citation 2.12 Procedures to Improve Program Effectiveness

Section 9103 P.L. 99-509 — 9. Requirement to Prohibit Retroactive Modification of Support Arrearages.

[ ] The State has in effect laws which implement section 9103 of P.L. 99-509. A copy of the statute or court ruling is attached.

[ ] State legislation is required to comply with the requirement specified above. The State's legal basis for requesting a delay in implementation for this requirement is attached. The State will implement the delayed procedure _____.

TN#_____ Approval Date_____ Effective Date

OCSE-PIQ-88-01 (Revised)
Date: May 12, 1988

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

Subject: Notice of Collection of Assigned Support

To: Alexander W. Porter
OCSE Regional Representative
Region III

This PIQ supersedes PIQ 86-3 dated August 1, 1986, and clarifies policy regarding the requirement that States send individuals who have assigned rights to support under §232.11 an annual notice of the amount of support collected.

As a result of your November 23 request to review this issue, we are issuing this PIQ to clarify that a State is not required to send a notice of support amounts collected to AFDC families in cases where neither a support order nor an agreement for voluntary payments has been established.

Therefore, the policy regarding notice of collection of assigned support is as follows. In IV-D cases in which a support order or an agreement for voluntary support has been established, States must provide an annual notice of the amount of support collected during the past year to individuals who have assigned rights to support under §232.11, in accordance with section 454(5) of the Social Security Act (the Act) and the implementing regulations at 45 CFR 302.54. States must also send an annual notice to each current AFDC recipient even if no collection was made during the past year, and to each former AFDC recipient whenever a collection was made on assigned arrearages during the past year.

With respect to former AFDC recipients, a notice of support collected must be sent only to individuals who continue to receive IV-D services. It is not necessary to send notices to former AFDC recipients who are no longer receiving IV-D services, even though collections may be made to reimburse past assistance paid to their families. This Is consistent with section 454(5) of the Act.

If there is a support order or an agreement for voluntary payments, it is important for the AFDC family to know whether or not collections have been made so they can

keep track of amounts owed to them and assist in securing support by providing updated absent parent information. We believe the value of notifying these AFDC families whether or not collections have been made outweighs the administrative considerations involved in sending the notice.

In reference to the cost of sending these notices, there is no requirement that a separate notice be sent. The State could include this information with other notices being sent to AFDC families.

cc: OCSE Regional Representatives
Regions I, II, IV through X

OCSE-PIQ-88-02

Date: February 19, 1988

From: Robert C. Harris
Associate Deputy Director

Subject: Paternity Determination Services for the Alleged Father Where the Custodial Parent Has Not Asked for IV-D Services to Establish Paternity

To: Guadalupe Salinas
0CSE Regional Representative
Region VIII

This is in response to your memorandum of November 2 regarding the provision of paternity establishment services to alleged fathers. Specifically, you asked if a State IV-D agency is obligated to accept an application for services from alleged fathers and to provide paternity establishment services in cases in which the custodial parent is not receiving AFDC and has not applied for IV-D services.

Section 454(6)(A) of the Social Security Act provides that the child support collection or paternity determination services established under the plan shall be made available to any individual not otherwise eligible for such services upon application filed by such individual with the State. Because the statute specifically states "any individual," we cannot exclude a category of applicants. Therefore, alleged fathers may apply for IV-D services that seek to determine paternity, establish an order and assure payment of child support. Putative fathers applying for paternity establishment services should be apprised of the following: they may be required to submit to a blood test to provide evidence of paternity; the court will be asked to consider the income and resources of both parents and to apportion support liability between them; the IV-D agency cannot represent the father in an adversarial or traditional "attorney client" capacity, but will perform services they deem to be appropriate and in the best interests of the child; custody and visitation issues cannot be handled by IV-D staff; and, the applicant for services may be assessed costs, if the State has elected to recover costs, pursuant to 45 C.F.R. 302.33(d).

Our responses to your additional two questions are as follows:

1. Question: Is there any provision in the regulations that protects the best interests of the child, e.g., where it is common knowledge that the man alleging paternity

is a convicted felon who has served time for assault and battery?

Response: Regulations at 45 CFR 303.5(b) state that a IV-D agency need not attempt to establish paternity in any case involving incest or forcible rape, or in any case in which legal proceedings for adoption are pending, If in the opinion of the IV-D agency, it would not be in the best interests of the child to establish paternity. No other lV-D regulations governing paternity establishment address the best interests of the child in non-AFDC cases. However, we believe that the "good cause circumstances" set forth at 45 CFR 232.42, although not directly applicable, may have some bearing in these cases. If the IV-D caseworker has cause to believe that paternity establishment might present a clear risk of physical or emotional harm to the child, even if no State law was applicable, there could arguably be cause for not pursuing paternity establishment. We believe that such cases would be rare and that an administrative review should be required to make any "good cause determination". This "good cause" policy could be analogous to the "good cause circumstances" set forth at 45 CFR 232.42 and applied when a custodial parent applies for AFDC.

2. Question: Are the natural mother's wishes to be respected if she indicates that she does not want a relationship between the child and the man alleging paternity?

Response: When a paternity suit is initiated, the court hears and decides the factual and legal issues of the case. After paternity is adjudicated, custody and visitation issues would be resolved after consideration of the child's best interests, and the parents' interests and concerns may bear on those determinations.

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

OCSE-PIQ-88-03
Date: March 18, 1988

From: Robert Harris
Associate Deputy Director

Subject: Providing Enforcement Services In Certain Arrearage Only Cases

To: Regional Representative
Region VIII, Denver

This is in response to your memorandum of January 14 requesting our interpretation as to whether Montana's case management system may exclude non-AFDC arrearage only cases or welfare liability only cases when the debt is not court ordered and/or has not been reduced to judgment. Complaints from IV-D agencies in the States of Washington and Oklahoma have challenged Montana's policy in this area. You indicated that Montana justified the adoption of this policy because of a need to focus on the implementation of the State's corrective action plan which was adopted to correct deficiencies identified during the FY 1984 audit of its IV-D program.

A State may not preclude recovery efforts in arrearage only cases if there is an enforceable support order. Furthermore, provisions at section 466 (a) (9) of the Social Security Act (the Act) require that arrearages accruing under any child support order be considered judgments by operation of law, with the full force, effect, and attributes of judgments of the State, including the ability to be enforced. Section (a) (9) also requires that these arrearages be entitled as judgments to full faith and credit in such State and in any other State. Since both Washington and Montana have approved State plan sections certifying compliance with section 466(a)(9) of the Act, Montana should be enforcing arrearage only support orders referred by the State of Washington.

With respect to the Oklahoma case, in which Montana rejected a request for mandatory wage attachment, OCSE regulations at 45 CFR 301.1 provide States the option of whether or not to collect "overdue support" using the mandatory practices in <302.70 (including wage withholding) for children who are not minors. However, as previously stated, the State may not refuse totally to enforce past-due court or administratively ordered support owed to emancipated children in IV-D cases so long as such orders remain enforceable in the State in which they were originally issued. In addition, the requirements at 45 CFR 303.10(b)(3) provide that, if a State elects to establish procedures for case assessment and prioritization (which Montana has done), the State may not systematically exclude any service required to be provided under the IV-D State plan, including enforcement of support obligations. Montana's policy regarding arrearage only

cases does not appear to be in compliance with these requirements.

The implementation of a corrective action plan which is designed to correct compliance deficiencies identified in audit findings does not allow the State to stop providing services in other areas. Moreover, such an approach would result in the State being found out of compliance with requirements governing those neglected services in future audit periods.

OCSE-PIQ-88-04
Date: March 25, 1988

From: Wayne A. Stanton
Director

Subject: Calculating Interest Income on Title IV-D Collections

To: Regional Representatives
Office of Child Support Enforcement

This is in response to a number of requests for policy guidance concerning computation of interest income on title IV-D collections.

The attached policy statement establishes a methodology for calculating interest income on title IV-D child support collections in the absence of a reasonable State methodology for calculating such interest. The methodology set forth in this document applies to the calculation of interest earned on collections deposited in a separate account or commingled with other State funds.

OCSE-PIQ-88-05
Date: April 15, 1988

From: Robert C. Harris
Associate Deputy Director

Subject: Interest Earned on IV-D Collections By County Courts Not Under Cooperative Agreements (Audit Finding No. NC 87-OA2)

To: Suanne Brooks
OCSE Regional Representative
Region IV

This is in response to your memorandum of January 13 regarding a Region IV audit finding which recommends that amounts of interest earned by North Carolina counties on child support collections be identified and that the appropriate financial adjustments be made to the State's quarterly expenditure claims. You indicate that the collections are not made pursuant to a cooperative agreement with the IV-D agency because county courts are required by State statute to collect child support and submit the collections to the IV-D agency and, therefore, no Federal funds are used to reimburse the courts for these activities.

Your questions and our responses are as follows:

1. Question:

Since the county courts are not reimbursed by Federal funds, must the State recover and report the interest earned on child support collections made by the county courts?

Answer:

Since the county courts are not under cooperative agreement with the IV-D agency they are not subject to Federal statutes or regulations governing State IV-D programs and any interest earned by the county courts does not have to be excluded from the State's quarterly expenditure report. Once collections have been transferred to the IV-D agency or any entity under cooperative agreement with the IV-D agency, however, all interest earned on the collections must be reported and the total amount excluded from the State's quarterly expenditure claims. However, the circumstances in North Carolina raise an interesting set of questions concerning whether the North Carolina IV-D program should have some more formal, legal relationship with the courts that are collecting child support.

2. Question:

Do provisions of P.L. 90-577, the Intergovernmental Cooperation Act of 1968, relieve the State from the obligation to make appropriate financial adjustments for any interest earned by political subdivisions on child support collections?

Answer:

We find no basis to support the State's claim regarding the provisions of P.L. 90-577. Support collections made as a result of services provided under the State IV-D plan are not grant-in-aid funds and, therefore, not subject to the provisions of P.L. 90-577. Those collections are, however, subject to the requirements of section 455(a)(1) of the Social Security Act, and implementing regulations at 45 CFR 304.50(b) under which the IV-D agency must exclude from its quarterly expenditure claims an amount equal to all interest and other income earned resulting from services provided under the IV-D State plan.

OCSE-PIQ-88-06

Date: June 29, 1988
From: Robert C. Harris
Associate Deputy Director

Subject: Reevaluation of Policy Regarding the Definition of IV-D Fraud

To: Ann Schreiber
OCSE Regional Representative
Region II

This is in response to your memorandum dated December 18, 1987 regarding the availability of Federal financial participation (FFP) for the investigation and prosecution of IV-D related fraud.

We agree that the situations that could be considered IV-D related fraud cited in examples 1 and 2 on page 2 of PIQ #76-C-5 dated April 22, 1976, and example 3 on the same page, in a State that uses the IV-A recovery method, are more directly related to the IV-A program. Therefore, we are rescinding PIQ #76-C-5. OCSE policy regarding the availability of FFP for the investigation and prosecution of IV-D related fraud is set forth below.

Federal Financial Participation for the Investigation and Prosecution of IV-D Related Fraud

Federal regulations at 45 CFR 302.34 provide that cooperative arrangements with appropriate courts and law enforcement officials for the provision of IV-D services may include provisions for the investigation and prosecution of fraud directly related to paternity and child and spousal support. (Emphasis added.) The regulations at 45 CFR 304.21(a)(l) provide that FFP is available at the applicable matching rate for the costs of activities specified in 45 CFR 304.20(b)(2) through (8) performed by a law enforcement official under a written cooperative agreement. In addition, the regulations at 45 CFR 304.22 provide that FFP is available at the applicable matching rate for the purchase of support enforcement services specified in 45 CFR 304.20 and included under the IV-D State plan. The services and activities specified in 45 CFR 304.20(b) include under the establishment and enforcement of support obligations the investigation and prosecution of fraud related to child and spousal support. See 45 CFR 304.20(b)(3)(v).

Pursuant to the above regulatory provisions, FFP is available for the costs of investigating and prosecuting fraud directly related to child and spousal support. FFP is not available for the costs of investigating and prosecuting fraud related to eligibility for AFDC or related to support payments received directly by the AFDC recipient in States which have opted to recover direct payments

using the IV-A income method. The following examples are situations that could be considered fraud directly related to child and spousal support.

1. In the process of establishing and enforcing support obligations,the IV-D agency, law enforcement official, or other party discovers that the absent parent, or custodial parent in non-AFDC cases, appears to have intentionally reported incorrectly income and assets to the IV-D agency. Further investigation and prosecution would be eligible for FFP.

2. In the process of establishing and enforcing support obligations, the IV-D agency, law enforcement official, or other party discovers that the absent parent appears to have intentionally reported incorrectly a change in circumstances such as loss of a job to the court or expedited process authority during a proceeding to modify a support obligation. Further investigation and prosecution is eligible for FFP.

3. In the process of establishing and enforcing support obligations, the IV-D agency, law enforcement official, or other party discovers that assigned support payments are being received directly and retained by AFDC applicants and recipients in a State that has elected the IV-D recovery method under 45 CFR 302.31(a). Further investigation and prosecution is eligible for FFP.

You ask whether a law enforcement official under a cooperative agreement which provides for other IV-D functions can receive FFP for the investigation and prosecution of IV-D related fraud when it is actually uncovered by another agency. Federal regulations at 45 CFR 304.20(b)(3)(v) indicate that FFP is available for the cost of establishing and enforcing support obligations including the investigation and prosecution of fraud related to child and spousal support. The regulations do not place any restrictions on who may identify the suspected IV-D related fraud so long as it is identified during the establishment and enforcement of support obligations under the IV-D State plan. Therefore, a law enforcement official under a written cooperative agreement which provides for other IV-D functions may receive FFP for the prosecution and investigation of IV-D related fraud actually uncovered by another agency that performs IV-D activity.

cc: OCSE Regional Representatives
Regions I and III through X

OCSE-PIQ-88-07
Date: July 11, 1988

From: Associate Deputy Director
Office of Child Support Enforcement

Subject: Undistributable Child Support Collections

Ann Schreiber
To: OCSE Regional Representative
Region II

This is in response to your memorandum dated February 73, 1988 requesting a policy interpretation on defining and disbursing undistributable child support collections. Your questions and our responses are listed below:

Questions: Since Federal regulations do not provide for the disposition of undistributable child support collections, can they be disbursed outside of the purview of the program (as abandoned property) in accordance with State law? Should any share of undistributable collections be paid to the Federal government?

Response: Before disbursing an undistributed child support collection, the State IV-D agency must ensure that it is a IV-D collection. If the collection cannot be identified as a IV-D collection, the IV-D agency is not responsible for disbursing the collection. However, if the undistributed collection does represent a IV-D collection, the State must make reasonable efforts to distribute (such as a detailed review of agency files, use of State parent locator service, public notices, etc.) before declaring a collection undistributable.

When a collection can be identified as received for an AFDC case, specific case data must be available in order to distribute the collection in accordance with 45 CFR 302.51. For example, the State must know the amount of the obligation and the date of collection in order to determine any $50 disregard due the family. The State must also know the amount of unreimbursed assistance paid to the family in order to determine the amount of the collection which is available to reimburse the State and Federal governments and the amount available to be paid to the family. The distribution regulations cannot be applied unless the collection can be attributed to a specific case. If the State has sufficient information to do this, the collection is not undistributable.

If a IV-D (AFDC or non-AFDC) collection is truly

undistributable, the State may dispose of it in accordance with State law. States may, for example, provide that such collections must be refunded to the obligor or that they become the property of the State if unclaimed after a period of time. In the latter case, if clearly identified as IV-D collections, this revenue must be counted as program income and be used to reduce IV-D program expenditures, in accordance with Federal regulations at 45 CFR 304.50.

Please let us know if you have any additional questions on this issue.

cc: Regional Representatives
Regions I and III through x

OCSE-PIQ-88-08
Date: July 15, 1988

From: Associate Deputy Director
Office of Child Support Enforcement

Subject: Application of Collections to Current or Past-due Support

To: H. Gary Mounts
Deputy Associate Administrator
for Grants Management

This is in response to your memorandum dated April 7 regarding the procedures used by the Utah IV-D agency to distribute support collections. You ask if collections must be applied against current obligations as required by Federal law or be applied to judgments of the court for past-due support payments as required by State law.

Regulations at 45 CFR 302.51 require the IV-D State plan to provide that "amounts collected shall be treated first as payment on the required support obligation for the month in which the support was collected and if any amounts are collected which are in excess of such amount, these excess amounts shall be treated as amounts which represent payment on the required support obligation for previous months." The regulations clearly place current support as the first priority in the distribution scheme. Therefore, any amounts collected by the State IV-D agency shall be treated first to satisfy current support obligations with the custodial parent receiving the $50 disregard payment. The only exceptions are Federal and State income tax refund offset collections, which are distributed as arrearages.

In response to State concerns that due process requirements for notice and hearing can apply only in cases where a garnishment for "past arrearages" is applied pursuant to a judgment for such obligation, we have two comments. First, since section 466(a)(9) of the Social Security Act (the Act) now requires that all child support payments, on and after the date they are due, shall become judgments automatically by operation of law, the State's distinction between arrears and current debt may be obviated. Due process protection apply in the course of the proceeding to establish the order. Collection protection ensuring that correct assessments are levied against the proper individuals, can be applied to the "judgment" which is effective for any period for which support is due. Second, we construe the Utah problem as essentially a bookkeeping matter. No prejudice results for the garnishee so long as he or she is credited with having satisfied the State judgment for whatever period the State ledger accounts for the payment as

received. Distribution, in accordance with Federal rules, merely requires distribution of payments pursuant to §§457(b)(1), (2) and (3) as if they were received as current support. The State records could reflect receipt of an arrearage recovery so long as the family receives its (b)(1) - $50 pass through - and (b)(3) payments.

Robert C. Harris

cc: 0CSE Regional Representatives
Regions I through X

OCSE-PIQ-88-09
July 25, 1988

Robert C. Harris
Associate Deputy Director

Response to Request for Policy Interpretation -- Interstate Location Responsibilities of Responding States

OCSE Regional Representative
Region IV

This is in response to your memorandum of May 5 regarding the location requirements contained in the final rule, Provision of Services in Interstate IV-D Cases, published February 22, 1988. Specifically, North Carolina has asked the extent to which the responding State Parent Locator Service must be involved in interstate cases.

Your questions and our responses are as follows:

1. Question:

Is the responding State required to submit an initiating State's case to the Federal Parent Locator Service?

Response:

While regulations at §303.7(c)(4)(i) require that the responding State IV-D agency must provide location services in accordance with §303.3, paragraph (f) of §303.3 states that the responding State IV-D agency must follow the procedures listed in §303.3(a) through (d). Section 303.3(a) through (d) requires the responding State IV-D agency to access all appropriate State and local location sources. Therefore, in interstate cases, the requirement in §303.3(e) that appropriate cases be transmitted to the Federal Parent Locator Service applies to the initiating State IV-D agency.

2. Question:

Are the duties of the responding State met with the completion of an in-State search? Also, to what extent must other resources such as Hooper Holmes and the EPLN project be used?

Response:

As stated previously, responding State IV-D agency responsibilities include accessing all appropriate State and local location sources. Furthermore, the responding State must meet the requirements at §303.7(c)(5) and (6) if, as a result of location information, the absent parent is located in a different jurisdiction within the State or in a different State.

Although regulations in §303.3 list specific location sources which at a minimum must be accessed (e.g., the list in paragraph (c)), the list is not intended to be limiting or exhaustive. States must access all appropriate State and local location sources. In addition, States must provide services in interstate cases as they would in intrastate cases. Therefore, while location sources such as the EPLN project and investigative services such as Hooper Holmes are not specifically listed in the regulations, States should access these sources if appropriate and/or if these sources would ordinarily be accessed in intrastate cases.

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

OCSE-PIQ-88-10

Date: August 17, 1988

From: Director
Policy and Planning Division

Subject: Policy Interpretation--Use of Forms in Interstate Cases

To: OCSE Regional Representative
Region I

This is in response to your May 31 request for an interpretation regarding mandated use of URESA Action Request forms. You described a situation where the Rhode Island Family Court refused to accept an interstate action request from Washington because Washington's computer-generated form is not a replica containing the same information and in the same format as the required forms.

Regulations at 45 CFR 303.7(b)(3) require that, effective February 22, 1988, the initiating State must submit with each case either the Interstate Child Support Enforcement Transmittal Form or the URESA Action Request Forms package, as appropriate. However, the regulations provide that States may use a computer-generated replica in the same format and containing the same information (emphasis added). This provision was added because of the overwhelming need for standardization of information transfer and because the transmission of the standardized data elements in the same format is more important than use of the actual forms themselves. Rhode Island is correct in interpreting §303.7 (b)(3) to require that computer-generated forms must be replicas in the same format. Washington's form is not in the same format and does not contain all of the same information. However, cases which are not transmitted via the forms or replicas of the forms may not be returned to the initiating State by responding State IV-D agencies or central registries.

States are required to include forms with all interstate IV-D cases referred on or after February 22. However, if the responding State IV-D agency receives a case which is not transmitted on required forms or replicas in the same format, the responding State IV-D agency must request the missing forms from the initiating State. In this situation, in accordance with the regulations at §303.7(b)(4), the initiating State IV-D agency must provide the requested forms or notify the responding State when the forms will be provided within 30 days of receipt of the request. Section 303.7(c)(4)(iii) requires the responding State IV-D agency to process the case to the extent possible pending necessary action by the initiating State. Therefore, the responding IV-D agency may not delay action on an interstate case if

all documentation necessary to proceed with the case is adequate but the proper forms were not submitted.

Similarly, as of August 22, 1988, when all States must have established central registries in accordance with the requirements in §303.7(a), the central registry, as set forth in §303.7(a)(2), must ensure that the documentation submitted with the case has been reviewed to determine completeness and that any missing documentation has been requested from the initiating State. Therefore, in situations such as the one discussed above, the central registry must request the missing required forms from the initiating State. The initiating State IV-D agency must then, in accordance with §303.7(b)(4), provide the central registry with the forms or notify the central registry when the forms will be provided within 30 days of receipt of the request. Pending receipt of the forms, as set forth in §303.7(a)(3), the central registry must forward the case for any action which can be taken. The central registry may not hold the case if all documentation necessary to proceed with the case is adequate but the proper forms were not submitted.

Regional Offices (in this case Region X) should work with their States to ensure the appropriate forms or replicas in the same format are used in transmitting interstate IV-D cases.

cc: OCSE Regional Representatives
Regions II - X

OCSE-PIQ-88-11

August 25, 1988

David B. Smith
Director, Policy and Planning Division

Policy Information Questions: Child Support for Children in Foster Care Placement

Ann Schreiber
OCSE Region II Representative

This is in response to your July 6 memorandum in which you raise Policy Information Questions concerning providing IV-D services in title IV-E and non-title IV-E foster care cases.

Your questions and our responses are as follows:

Question 1: Can FFP be provided through title IV-D of the Act for the costs associated with obtaining support for children in foster care (both title IV-E and non-IV-E cases) when it is determined that both parents remain in the home from which the child was removed? Does it matter whether the child's removal from the home was voluntary or agency initiated?

Response: FFP under title IV-D is available for the costs associated with providing IV-D services for IV-E foster care children referred by the IV-E agency and for non-IV-E foster care children for whom there is an application for IV-D services and the application fee has been paid, even if both parents remain in the home from which the foster care child was removed. The State IV-D agency may pursue support from either parent or any other legally responsible individual, regardless of the circumstances leading to the support problem. Provisions of services under title IV-D of the Act is not affected by whether the foster care placement was voluntary or agency initiated.

Question 2: Is there any method by which continued IV-D services as envisioned in section 9141 of P.L. 100-203 can be applied to title IV-E cases upon their closure?

Response: Section 9141 of P.L. 100-203 requires IV-D agencies to continue to provide IV-D services to persons no longer eligible for AFDC without need for filing an application form or paying an application fee. There is no similar provision for the automatic continuation of IV-D services in closed title IV-E foster care cases. This issue, as well as many other issues, will be addressed as part of proposed regulations implementing P.L. 100-203.

cc: OCSE Regional Representatives

Regions I and III through X

OCSE-PIQ-88-12
Date: September 15, 1988

From: Robert C. Harris
Associate Deputy Director

Subject: Maintenance of Case Records via Electronic Means versus Hard Copy

To: Sharon M. Fujii
OCSE Regional Representative
Region IX

This is in response to your memorandum dated July 8, 1988, regarding the maintenance of case record retirements at 45 CFR 303.2. You asked us to respond to several specific questions raised by California and to address the general policy issue regarding electronic versus hard copy record maintenance.

Federal regulations at 45 CFR 303.2 require "(F) or all cases referred to the IV-D agency or applying under section 302.33 of this chapter, the IV-D agency must immediately establish a case record which will contain all information collected pertaining to the case." Under this regulation, the case may be maintained on an automatic system, on paper, or a combination thereof. As you know we strongly support the use of automated systems in child support enforcement programs to ensure expeditious, accurate transfer of information and to greatly reduce the amount of paperwork involved in processing and working IV-D cases.

California's questions and our responses are as follows:

Question 1: Regarding the requirement to "immediately establish a case record," must physical case file folders be maintained for each case?

Response: Federal regulations at 45 CFR 303.2 do not require the IV-D agency to maintain physical case file folders (i.e, hard copy) for each IV-D case if the entire case record is maintained on an automated system. While section 303.2(a) requires AFDC referrals and non-AFDC applications to be included in the case record, only the non-AFDC application for IV-D services must be maintained, either in hard copy or in microform since an automated system cannot include signatures on IV-D applications. Legal documents, such as a support order by the court or administrative authority, may be summarized in the automated system as long as the case record indicates where the support order is maintained.

Question 2: If a case is reviewed at intake, and will not be opened for a valid reason (e.g., the absent parent is verified as deceased), can an electronic record summarizing the referral information be substituted for a physical file?

Response: Yes. If a IV-D case will not be opened for a valid reason, the IV-D agency may maintain an electronic record that summarizes the referral information and the reason the IV-D case was not opened.

Question 3: If an electronic record is immediately established that is used to summarize all pertinent information, documents and contacts, is there any need for a physical case file folder? If so, what specific documents must be accessible in a physical case file?

Response: As discussed in the response to question number one, the non-AFDC signed application for IV-D services must be maintained either in hard copy or in microform.

Question 4: Subsection (a) of the regulation requires retention of the physical referral document, yet States are being encouraged to develop automated IV-A/IV-D interfaces. Must a physical document be created and retained although the intake process is fully automated?

Response: The IV-D agency may maintain the referral information on its fully automated system without a duplicate physical document being created and retained.

Question 5: Subsections (b) through (k) require a "record" to be maintained. Please comment about whether the term record is used to mean an original document, a copy of a document or a summary notation in a physical or electronic record?

Response: Records of contacts, communications, and other actions in a case may be maintained in a physical or electronic record. A summary notation in the physical or electronic record meets the maintenance of records requirements in 303.2(b) through (k) as long as there is a clear audit trail. The requirement in 45 CFR 303.2(g) for a record identifying the court order or calculation of the amount of the

obligation does not require maintaining a hard copy of the original court order or calculation of the obligation if the record indicates where the support order is physically located.

Question 6: Subsection (1) refers to a "notation" entered in the case record. Please comment about whether an electronic notation in an automated record would be sufficient.

Response: An electronic notation of case closure in an automated case record would be sufficient to meet the requirement in 45 CFR 303.2(1) if the notation includes the date of, and reason for, closure.

OCSE-PIQ-88-13
Date: October 17, 1988

From: Robert C. Harris
Associate Deputy Director

Subject: Treatment of the $50 Disregard in Cases in Which the Custodial Parent Retained the Direct Child Support Payment

To: Guadalupe Salinas
Regional Representative, Region VIII

This is in response to your memorandum dated September 9, 1988 regarding the treatment of the $50 disregard in cases in which the custodial parent retains direct child support payments. Your questions and our responses are as follows;

Question 1: How does the IV-D agency determine current support for purposes of the $50 disregard when payments are received directly and retained by the custodial parent?

Response: The final regulations on the $50 disregard published in the Federal Register on June 9, 1988 (53 FR 21642) at page 21643, in response to a comment, set forth OCSE policy regarding the payment of the $50 disregard when the custodial parent retains support received directly from the absent parent. The response states that "...' if there is an AFDC payment made on behalf of a child, the first $50 of current support must be paid to the family pursuant to section 457(b)(1) of the Act (regardless of whether it is received directly by the family). The amount of the assistance payment or the actions of the payee do not affect distribution of the support collection." OCSE took the same position in the final regulations on direct payments published in the Federal Register on August 27, 1985 (50 FR 34693). The preamble of the regulations at page 34693, under the heading "Provisions of the Final Regulations", states "In addition, we want to remind States of the recently revised sections 402(a)(8)(A) and 457(b) of the Act which require that the first $50 collected on a monthly support obligation be paid to the AFDC family. Despite the fact that retained amounts must be repaid in accordance with either of the methods described below, the individual who retains a direct payment is entitled to the first $50 of the monthly

support collection. Therefore, regardless of whether the State is a IV-A income or a IV-D recovery State, the State must take into account the $50 payment to the AFDC family when determining the amount of retained support that is owed by an individual." Our policy is based on the parenthetical clause in section 402(a)(8)(A)(vi) of the Act which requires the disregard of the first $50 of support received in a month, "including support payments collected and paid to the family under section 457(b)".

Question 2: In a IV-D recovery State, child support payments of $200 per month (the amount of the obligation) were received directly and retained by the custodial parent (AFDC caretaker relative) each month during March through June 1988. In July 1988, the IV-D agency discovers the retained payments. What amount is to be recovered and for which months is the $50 disregard allowed?

Response: As suggested on page three of your memorandum, the IV-D agency must allow the $50 disregard for each of the four months in which child support payments were received directly by the custodial parent and the amount to be recovered would be $600 of the $800 received and retained by the custodial parent.

You ask that we include our policy regarding the payment of the $50 disregard when child support is retained by an AFDC family in regulations. Since the IV-A statute clearly encompasses direct payments, no regulatory change is needed. Furthermore, we do not believe it is necessary or advisable to revise the regulations each time a clarification of Federal policy is requested. Preambles to the regulations, action transmittals, policy interpretation questions and other policy issuances are all legitimate means of setting forth Federal policy involving the clarification of regulatory language or interpretation of Federal law. This memorandum clearly sets forth Federal policy regarding the payment of the $50 disregard when child support is received directly and retained by an AFDC family.

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

September 30, 1988

Note to Robert C. Harris

Re:Application of $50 Disregard in Direct Payment Cases

We agree with your statement of policy, but, in light of extensive litigation in this area, we believe your response should be tied to interpretation of section 402 (a) (8) (A) (vi) of the Social Security Act. The parenthetical clause at the close of that paragraph states that the disregard of "the first $50 of any child support payments received in such month" shall be construed as "'including support payments collected and paid to family under section 457(b)." Emphasis added. By implication, other child support receipts must also trigger the disregard; and we believe that direct payments can be identified as the only child support collections which are not subsumed under the phrase "'payments collected and paid to the family under section 457(b)." Thus, it is section 402(a) (8) (A) (vi), rather than section 457(b), which defines the broad category of support "receipts" which are eligible for disregard.

The date of collection rule at 45 C.F.R. 302.51(a) is not strictly applicable to direct payment cases. That regulation, governs support collected and distributed under the IV-D system. Direct payments are not necessarily distributed pursuant to section 302.51(b), and reference to the title IV-A statute is necessary to determine the effect of the disregard. We agree that no change to title IV-D regulations appears warranted. The final paragraph should note that the IV-A statute clearly encompasses direct payments and that no regulatory change is needed.

Frank L. Dell'Acqua

By Robert E. Keith

OCSE-PIQ-88-14
Date: November 9, 1988

From: Robert C. Harris
Associate Deputy Director

Subject: Interstate Paternity; Continuation of Services to Former AFDC Recipients; Reporting Requirements for Indian Reservations

To: OCSE Regional Representative
Region VIII

This is in response to your September 14 request for an interpretation of several policy issues. Your questions and our responses are as follows:

1. Question: In interstate cases in which the initiating State uses its long-arm statute to establish paternity, which State is responsible for paying for service of process on the alleged father?

Response: In using its long-arm statute to establish paternity, an initiating State may request that the responding State serve the alleged father with process. Regulations at 45 CFR 303.7(d) require that, except for the costs of blood testing, the IV-D agency in the responding State must pay the costs it incurs in processing interstate IV-D cases. Therefore, the responding State must pay for service of process if the responding State incurs this cost at the request of another State.

2. Question: Are there any circumstances under which an administrative process State may require a power of attorney or other authorization to continue services to former AFDC recipients?

Response: Under State law, some States may not be able to take certain actions in a case without a power of attorney. Federal law and regulations do not preclude States from requesting a power of attorney prior to taking those actions. However, there are no circumstances under which an administrative process State may require a power of attorney as a condition of continuation of services. Congress intended that IV-D services to former AFDC recipients be automatically continued. States are required by 45 CFR 302.51(e)(2) to notify the custodial parent about the consequences of continuing to receive IV-D services. This notice must specify the services available for use at the agency's discretion, as well as the State's fees, cost recovery and distribution policies and must inform the family that services will be continued unless the agency is notified to the contrary. Therefore, the notice will provide the

custodial parent with adequate information to determine if he or she wants to refuse further IV-D services. The notice could also state that, although certain services will be continued automatically (e.g., collection, distribution, tax offset, liens, etc.), a power of attorney must be executed for any action in the case requiring a court appearance.

3. Question: Current OCSE reporting requirements make no allowance for Indian reservation cases which adversely affect State performance statistics. What is the possibility of modifying reporting requirements to take these cases into account?

Response: Lack of State jurisdiction on many Federal Indian reservations has historically hampered child support enforcement activities under Title IV-D of the Social Security Act. As you know, this unique situation makes it difficult to provide for the effective establishment and enforcement of child support orders with respect to individuals residing on Indian reservations. States are nevertheless required to carry out their responsibilities under Title IV-D of the Act with regard to these cases. We have no hard evidence that Indian cases significantly affect State performance statistics. Furthermore, we believe that modifying reporting requirements would encourage States not to aggressively pursue paternity establishment and support from individuals residing on the reservations. We urge you to encourage appropriate States to work with Tribal entities to develop cooperative arrangements for child support enforcement services on Indian reservations.

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

OCSE-PIQ-88-15
Date: December 9,1988

From: David Smith
Director, Policy and Planning Division

Subject: Oregon Question on Audit Standard for Paternity Establishment

To: Natalie DeMaar
Regional Representative, OCSE
Region X

This is in response to your memorandum of October 25 asking whether Oregon's current standard of operation meets the criteria set forth in 0CSE-AT-88-7, dated May 5, 1988, which sets forth the standard used to evaluate the establishment of paternity beginning with the audits conducted for FY 1988.

Oregon asks whether the State would be found in compliance with the standard in the following scenario. After having served an alleged father, exhausting all investigative resources including genetic testing, the case is dismissed without prejudice upon motion by Oregon's trial attorneys because there is little or no chance of prevailing at trial. The State indicates that under Oregon law, the mother's testimony must be corroborated by some independent evidence, which could include a genetic test, that tends to connect the alleged father with the conception of the child. Oregon contends that it is not clear that a genetic test, standing alone, will supply the necessary corroboration required under Oregon law and that a finding that the State has failed to establish paternity subjects the State to judgments for attorneys fees and costs of trial.

Under OCSE-AT-88-7, a IV-D case in which the putative father has been located and both paternity and support order establishment are necessary at the beginning of the audit period will meet the paternity establishment standard if, at the end of the audit period, either: 1) paternity and/or a support order has been established; or 2) legal action to establish paternity and obtain a support order has been initiated. While the State has met the test of initiating legal action to establish paternity on its face, we would not overlook a subsequent motion by the State's trial attorneys to dismiss the case because there is little chance of prevailing at trial. To do so would encourage States to file and subsequently move to dismiss paternity establishment petitions merely to meet the standard. Such actions would clearly be contrary to the intent of the paternity establishment standard in 0CSE-AT-88-7. A petition for paternity establishment which is dismissed because the putative father has been excluded by genetic

testing, or because the test results indicate an extremely low likelihood of paternity, would meet the standard as indicated in OCSE-AT-88-7.

Therefore, compliance with the paternity establishment standard in OCSE-AT-88-7 will be decided on a case-by-case review to determine if the State has made a serious, reasonable effort to establish paternity. Any such effort would include obtaining genetic tests. Clearly the state of the art of genetic testing makes it the best evidence available to establish paternity. Sf Oregon law does not clearly indicate that a genetic test is adequate corroborating evidence of paternity, we urge the State to seek legislation to ensure acceptance of genetic test results as adequate evidence to support the mother's testimony.

cc Regional Representatives,
Regions I-IX

OCSE-PIQ-88-18
Date: December 19, 1988

From: Robert C. Harris
Associate Deputy Director

Subject: Unreimbursed Public Assistance as "debt to the State" vs. child support arrears

To: Suanne Brooks
OCSE Regional Representative
Region IV

This is in response to your memorandum dated July 13, requesting a policy clarification regarding the collection of unreimbursed assistance by the IV-D agency. You ask if the agency is permitted to collect unreimbursed assistance using State laws of general obligation under which the parent of public assistance on behalf of a child creates a debt to the State owed by the parent or parents.

The fact that an absent parent is considered obligated under State law for the amount of assistance paid to his dependent child(ren) does not constitute a support obligation established in accordance with 45 CFR 302.50(a). This regulation requires that support obligations shall be established by court order or other legal process under State law, such as an administrative hearing process or a legally enforceable and binding agreement. Section 302.53 sets forth requirements governing the establishment of a support obligation in the absence of a court order covering the obligation. In such cases, the State must use a formula to determine the amount of the obligation and any arrearage. The formula must take into consideration, among other things, the earnings, potential earnings, and income and resources of the absent parent.

You are correct that the collection of unreimbursed public assistance in the absence of a court or administrative order for support or a judgment for support in the amount of the unreimbursed assistance is not an allowable IV-D function. Unreimbursed public assistance may be reimbursed:

(1) Up to the amount of support arrearages assigned to the State which have accrued under an order of a court or other legal process under State law, such as an administrative process; or

(2) If there is a judgment or order for support up to the

amount of the unreimbursed assistance.

Establishment of such judgments or orders for support arrearages, whether in conjunction with actions for current and future support, or following termination of AFDC, would also be an allowable IV-D function. If repayment of all AFDC based on a judgment or order for support relieves the absent parent's liability for back support for the period the family was on assistance, enforcement of such obligations would appear to be within the scope of the IV-D program. However, a State may not neglect pursuit of current and future support by over-emphasis of AFDC recovery.

If you have any questions on this issue, please let us know.

cc: OCSE, Regional Representatives
Regions I, II, III and V through X

OCSE-PIQ-88-19
December 19, 1988

Robert C. Harris
Associate Deputy Director

Montana's Policy of Rejecting Certain Arrearage Only Cases - Clarification

Guadalupe Salinas
0CSE Regional Representative
Region VIII - Denver

This is in response to your memoranda of May 12 and September 12 requesting our review of certain issues raised by Montana in its letter to you of April 20 regarding policy contained in PIQ-88-3, "Providing Enforcement Services In Certain Arrearage Only Cases."

The State indicated that PIQ-88-3 assumed that a court or administrative order existed in the arrearage only referrals from Washington and Oklahoma, whereas such orders did not exist. There is no question, apparently, that the State will enforce such orders if they exist and will establish orders if a current support obligation is also owed, i.e the child is still a minor. However, there is still a support obligation, even if an order has not been established, either by court or administrative procedure, or unreimbursed assistance has not been reduced to a child support judgment. Whether this obligation is enforceable would be a question of State law.

Montana's April 20th letter refers to "cases where court or administratively ordered debt does not exist" (emphasis ours), referring to cases where AFDC liability exists but there is no child support order or judgment. With respect to these "liability debts," it is our understanding that Montana intends this phrase to mean debts owed to a State which were incurred during the period the custodial parent was receiving assistance, but where no support order was ever established. The State need not pursue collection of such debt under its IV-D program and would not be required to honor an enforcement request of this type from another State unless the initiating State has reduced the unreimbursed assistance to a child support judgment. If, however, the State seeks reimbursement of the AFDC it has provided by suing the absent parent for back support in intrastate cases, and it has statutory authority to bring such actions on behalf of other States, then such services should be provided. As the Chief Counsel indicates, a State Attorney General's opinion may be appropriate to clarify Montana's authority.

The State also seems to acknowledge, on pages 1-2 of its April 20th letter, that it will not accept non-AFDC cases where there is no longer a current support order because the child, or children, have reached the age of majority, although arrearages exist which accrued while the order was in effect. With regard to these non-AFDC arrearage only cases, the State should be advised that IV-D services must be provided

unless there is a State law barring collection of arrearages for all non-minors in the State. A State may use the enforcement techniques required under 45 CFR 302.70 in these arrearage-only cases by exercising its option in accordance with 45 CFR 301.1 to include collection of overdue support for "children who are not minors." If the State elects not to exercise its option under 45 CFR 301.1, it need not use the mandatory techniques in 45 CFR 302.70 to enforce overdue support in these cases. This option affects only the procedures the State may use to collect arrearages. It does not, as the State suggests, give them the option to refuse to enforce these cases at all. The same is true for 45 CFR 303.72, which was cited by the State to support its position. This regulation also is only a limit on enforcement procedures. As stated in PIQ-88-3, some form of recovery efforts must be provided.

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

OCSE-PIQ-89-15

DEC 21, 1989

From: Robert C. Harris
Associate Deputy Director

Subj: Non-IV-D cases deemed IV-D cases by operation of State law or court rule

To : OCSE Regional Representatives
Regions I - X

This is to outline what actions should be taken in situations where it is determined that a State considers all child support orders/decrees to include an application for Title IV-D services by operation of State law or court rule.

1. State Plan Disapproval Process

Under regulations at 45 CFR 302.33(a), the State IV-D plan must provide that IV-D services shall be made available to any individual who files an application for services with the IV-D agency. An application for IV-D services is a written document which indicates that an individual is applying for child support assistance under the State's title IV-D program and is signed by the individual applying for IV-D services. The Regional Office should recommend disapproval of any State IV-D plan amendment which indicates that application for IV-D services is by operation of State law.

2. Disallowance of Expenditures

If the State has an approved IV-D plan, yet the Regional Office determines that non-IV-D cases are automatically considered IV-D cases without an application, the Regional Office should conduct a review to determine whether the State has received Federal funds for the costs associated with non-IV-D cases. If it is determined that a State claim for Federal financial participation in expenditures is not allowable, the Regional Office should issue a disallowance letter to the State, as set forth in regulations under 45 FR §§201.14 and 304.29. The disallowance process would also apply if the problem is identified in an audit, in conjunction with the audit penalty process.

3. Adjustment of Incentives

If the Regional Office determines that a State has received incentives based on non-IV-D collections, the Regional Office should notify the Central Office. If the Central Office determines that adjustments are necessary, the State's IV-A grant award will be reduced.

4. Withholding of Quarterly Advances

Regulations at 45 CFR 301.16 state that no advance for any quarter will be made unless full and complete reports on expenditures and collections have been submitted. A report is full and complete only if all line items are reported and the report contains all applicable information available to the State and appropriate for inclusion in the report. Quarterly advances can be withheld when two quarters have passed after the quarter in which the reporting was not full and complete. If a State submits Federal reports which count payments on non-IV-D cases, the Regional Office should promptly notify the State that it does not consider the report to be full and complete under 45 CFR 301.16. If the State does not submit accurate information within the next two quarters, the Regional Office should notify the Central Office.

OCSE-PIQ-89-01

DATE: January 23, 1989

FROM: Robert C. Harris
Associate Deputy Director

SUBJECT: Ohio's Interpretation of Federal Application, Program Income and Distribution Requirements

TO: Marion N. Steffy
OCSE Regional Representative
Region V

This is in response to your memorandum of November 25 requesting our assistance in clarifying whether Ohio's implementation of portions of the State legislation that make all child support cases IV-D cases by operation of law, that allow the local agency to collect fees prior to applying exces payments towards arrearages, and that imply that these fees ar not program income would violate Federal regulations.

The first issue is whether the State may make all child support enforcement cases IV-D cases by operation of law without need for a signed application. We agree that your June 10 letter to Patricia Barry accurately delineates the requirement that individuals not otherwise eligible for IV-D services must file an application for child support enforcement services under title IV-D of the Social Security Act, and that without such application Federal financial participation is not available for costs associated with providing child support enforcement services to those individuals. The only exception to this general rule is for services provided pursuant to section 457(c) of the Act to individuals who previously received assistance under part A. Our policy with respect to non-AFDC applications is set forth in OCSE-AT-76-9 (June 9, 1976) which states under paragraph one on the second page:

> "In order to comply with the statutory requirements of filing an application, the application must be in writing, and may not be an oral application. The application must be signed by the individual applyin for child support services. Although the State IV-D agency should consider using a uniform application form on a Statewide basis specifically for services pursuant to title IV-D, any written document indicating that the individual is seeking assistance with a child support problem will be sufficient."

In addition, you forwarded a copy of one Ohio county's IV-D application which consists of a two-part endorsement on the back of a child support check. The payee signs one line to cash the check and another to authorize receipt of IV-D services. Our policy wit respect to applying for IV-D services by check endorsement is set forth in PIQ-83-14-A (August 11, 1983), which states:

> "We have previously accepted a signature on the back of a check (endorsement) preceded by a stamped statement requesting IV-D services as an application. This was an interim procedure permitted to enable States which had large non-AFDC caseloads prior to the enactment of title IV-D to efficiently transfer these ongoing cases into the IV-D program."
>
> "The practice of obtaining applications by check endorsement does no provide the individual any option as to whether or not to apply for IV-D services. Consequently, this form of application is limited to those cases that were transferred into the system immediately after the enactment of title IV-D and is not acceptable for new cases."

The above Ohio county has two separate lines for endorsing the check and authorizing services, and thereby appears to meet the test of choice. However, any such process must meet Federal Reserve System requirements transmitted to States via OCSE-IM-88-6 (August 19, 1988) regarding space limitations on the back of the check for the endorser's signature and identifying information.

We believe the foregoing clearly states our position with respect to written applications for IV-D services.

The second issue is whether money collected in excess of current child support obligations by the local IV-D agency must first be used for recoupment of child support arrearages before being retained as fees by the IV-D agency. Federal regulations do not prohibit States from charging fees other than those mentioned in regulations. Such amounts, if they are identified as fees, apply to all child support cases, and do not result in recovery of costs tied to administrative costs included under the IV-D State plan, are not subject to restrictions under title IV-D. In addition, if such amounts are identified as fees, and not child support, they are not subject to distribution requirements under the IV- program. However, if an amount is collected and is not designated as a fee, the State must assume it is child support and distribute it accordingly.

> The third issue is whether the fees collected are to be considered as program income under 45 CFR 304.50. These amounts are program income under 45 CFR 304.50 and must be excluded from the IV-D agency's quarterly expenditure claims, if collected under the title IV-D State Plan or as a result of services provided under the IV-D plan. It is unclear from your memorandum whether the "local agency" which collects the fees is a IV-D entity or operating under cooperative agreement as an agent of the IV-D agency.

OCSE-PIQ-89-02

February 14, 1989

Robert C. Harris
Associate Deputy Director

Nebraska's Proposed Amnesty Program For Settlement of Substantial Arrearages

Dwight F. High
OCSE Regional Representative

This is in response to your memorandum of December 22, 1988 requesting a policy interpretation regarding a proposed approach by the State of Nebraska to utilize its statewide credit reporting system in conjunction with an amnesty program designed to encourage prompt settlement of substantial arrearages. You indicate that under the proposal Nebraska would offer absent parents a one-time limited opportunity to submit arrearage cash settlement offers whereby the State could agree to waive accrued interest and up to a 15% reduction of the principal of the arrearage. You also indicate that the principle upon which the amnesty approach appears to be based is that the present value of the cash offered would exceed the value of the accounts receivable to be paid over an extended period of time. You ask if a State IV-D agency may compromise child support arrearages in such manner.

The Federal statute at 42 U.S.C. 666(a)(9) provides that any child support payment is on and after the date it is due a judgment by operation of law, with the full force, effect and attributes of a judgment of the State, and not subject to retroactive modification. Such support judgments may be compromised or satisfied by specific agreement of the parties on the same grounds as exist for any other judgment in the State. Consequently, in a non-AFDC case where no arrearages have been assigned to the State the obligee may agree to a settlement for an amount which is less than the accrued arrearages. Judgments involving child support arrearages assigned to the State under Titles IV-A, IV-E and XIX of the Social Security Act, of course, may not be compromised by an agreement between the obligee and obligor unless the State, as assignee, also approves such an agreement. Similarly, the State may not compromise any amount which could not be claimed by the State as reimbursement for public assistance, because that portion of the arrearage belongs to the custodial parent. In this circumstance, the custodial parent would need to be a party to the compromise or satisfaction of a judgment. It is also possible that if State law permits, the State could compromise only its portion of the judgment. State law may also require that any agreement affecting child support orders must be endorsed by the court or administrative authority to ensure that the best interests of the child are protected.

We would caution, however, against any wholesale use of such an approach, and that application be limited to the most intransigent cases involving large arrearages. Since States attempting to collect past-due support no longer have to seek additional court or administrative action to reduce the amount due to a judgment, and since the judgment itself has a long life, the chances for ultimate collection on large arrearages should improve with the diligent application of enforcement remedies.

OCSE-PIQ-89-03
DATE: April 5, 1989

FROM: Robert C. Harris
Associate Deputy Director

SUBJECT: Fifty Dollar Pass-through Payment for a Minor Parent

TO: Natalie deMaar
OCSE Regional Representative
Region X

This is in response to your memorandum dated March 8, 1989 regarding treatment of the $50 pass-through payment. Specifically, you asked about the case situation where the custodial parent is a minor who lives alone with her child and directly receives AFDC. The custodial parent (minor parent) has assigned support rights to the State and completed support referrals on the absent parent of her child, and on her parents, who do not receive AFDC. The IV-D agency has not received support from the absent parent of her child, but has received support from the parents of the custodial parent. Your questions and our responses are as follows:

Question 1: Does the minor parent meet the definition of resident parent, legal guardian or caretaker relative as used in 45 CFR 302.38?

Response: Yes. The minor parent is a resident parent under 45 CFR 302.38 who has custody and responsibility for her child.

Question 2: Is the minor parent entitled to the "pass-through" payment?

Response: Yes. Since the minor parent and her child are a household receiving AFDC, they are entitled to the pass-through payment under 45 CFR 302.51(b)(1). The pass-through payment must be made to the minor parent in accordance with 45 CFR 302.38.

Question 3: Should the "pass-through" payment be made directly to the minor parent?

Response: Yes. See response to question 2.

cc: OCSE Regional Representatives
Regions I-IX .

OCSE-PIQ-89-04
Date: April 11, 1989

From: Robert C. Harris
Associate Deputy Director

Subject: Interstate Policy Questions

To: Ann Schreiber
OCSE Regional Representative
Region II

This is in response to Wilma Hill's February 27 request for guidance in responding to policy questions posed by Joette Blaustein, Assistant Corporation Counsel, New York City Law Department. Specifically, Ms. Blaustein requests clarification of expedited processes requirements and paternity blood testing issues in interstate cases.

With regard to expedited processes requirements, Ms. Blaustein requested a policy statement addressing whether expedited process requirements are applicable in reciprocal support matters and if so, whether they are effective as of the date the respondent is served, or the date the petition is filed. As stated at 45 CFR §303.101, States must have in effect and use expedited processes to establish and enforce support orders in intrastate and interstate cases. Instructions on pages 8 and 9 of OCSE-AT-88-19 provide that expedited process timeframes apply beginning when a case is officially acknowledged or action is taken to initiate the process of establishing or enforcing a support obligation, or at the latest, the date the absent parent is served. Therefore, in interstate cases, the trigger for expedited process timeframes is either the date the absent parent is served in the responding State or the date the case is filed in the responding State, depending on which date the responding State has chosen as the trigger date for purposes of expedited processes.

With regard to blood testing in interstate paternity cases, Ms. Blaustein requested a clarification of OCSE policy with respect to which State must make arrangements for blood testing; which State may dictate the choice of lab or doctor to perform the tests; and whether responding States may require the initiating State to pay the cost of testing up-front. These questions are secondary to the importance of ensuring that paternity establishment is expeditious. However, because the responding jurisdiction is working the case, it has ultimate authority for decisions regarding the case including any issues concerning blood testing for paternity establishment. States must cooperate with one another in establishing paternity and these issues should be resolved based on what is acceptable in the responding court. Initiating States should accommodate the responding State's

request for up-front payment of costs in the interest of moving cases quickly. If paternity is established in the responding State, regulations at 45 CFR §303.7(d)(3) require that the responding State must attempt to obtain a judgment for the costs of blood testing from the putative father and, if costs of blood testing are recovered, must reimburse the initiating State.

cc: OCSE Regional Representatives
Regions I, III - X

OCSE-PIQ-89-05

May 9, 1989

Robert C. Harris
Associate Deputy Director

Request for Clarification of the Definition of a Child Support Enforcement Case Under the Title IV-D Program

Ann Schreiber
OCSE Regional Representative
Region II

This is in response to your memorandum of March 1, 1989, regarding what constitutes a IV-D child support case. Your questions and our responses are as follows:

Question 1: Must there be a parent or other legally responsible individual absent from the home of the dependent child(ren) and the caretaker adult in order for IV-D services to be provided?

Response: No, a parent or legally liable individual does not have to be absent from the home for services to be provided. State IV-D agencies must undertake to provide appropriate services which are in the best interests of the child in the case of any child with respect to whom an assignment of support rights is effective or to any individual who files an application for IV-D services.

Question 2: May a non-custodial, legally responsible (or potentially responsible) obligor apply for program services?

Response: Yes. Consistent with the position taken in OCSE-PIQ-88-2, non-custodial, legally responsible (or potentially responsible) obligors may apply for IV-D services. However, any such applicant should be apprised of the following: the IV-D agency cannot represent the individual in an adversarial or traditional "attorney-client" capacity, but will perform services deemed to be appropriate and in the best interests of the child; custody and visitation issues cannot be handled by IV-D staff; the applicant for services will be assessed costs, if the State has elected to recover costs pursuant to 45 CFR 302.33(d); and location services are only available to locate absent parents who owe support obligations.

Question 3: May the State IV-D program provide location services to the non-custodial individual who has applied to the IV-D agency although the persons to be located are the custodial individual and the dependent child(ren)?

Response: No. As indicated in your memorandum, the IV-D

agency must attempt to locate absent parents. Location services are not available to locate the custodial parent and/or child(ren), except in connection with parental kidnapping and child custody cases, in accordance with section 463 of the Act and implementing regulations at 45 CFR 303.15.

Question 4: If the custodial parent and child(ren) are not public assistance recipients and are unwilling to cooperate in the establishment of a support obligation based on the request of the non-custodial individual, must the IV-D agency continue to assist with the establishment process?

Response: As explained above, the IV-D agency must provide IV-D services to any individual who applies for services. Services must be provided, regardless of whether the custodial parent wishes to have the IV-D agency assist in obtaining support, as long as the provision of services is in the best interests of the child. As indicated in OCSE-PIQ-88-2, in response to question 2, when the court or administrative authority hears and decides factual and legal issues of the case, the parent's interests and concerns, in addition to the child's best interests, may bear on determinations with respect to the case.

cc: OCSE Regional Representatives
Regions I, III - X

OCSE-PIQ-89-06

May 19, 1989

Robert C. Harris
Associate Deputy Director

Policy Interpretation - Interstate Requirements Relating to Redirection of Payments

OCSE Regional Representative
Region VIII

This is in response to your April 19 request for a policy statement with regard to situations where a IV-D agency receives a case referred by the lV-A agency in which the absent parent pays regularly through the court of another State. Specifically, you ask whether the initiating State may contact the court in the other State directly to request a redirection of payments. You state that forwarding these requests through the central registry in the other State could be cumbersome. Furthermore, you point out that the absent parent may no longer even be a resident of the order State.

As stated in §303.7(a)(1), central registries are responsible for receiving, distributing and responding to inquiries on all interstate IV-D cases. Because the cases you describe are IV-D cases, any requests for action must be sent to another State's central registry. While some actions would necessitate sending cases to the State where the absent parent resides (or is employed), in this particular situation the appropriate State to receive the request for redirection of payments is the State with the order.

This is not a cumbersome process. The initiating State must forward the URESA Action Request form with the "change payee" block checked and enough case and address information to ensure the action can be completed. The central registry in the responding State must forward the request to the appropriate court within 10 days of receipt of the request and maintain only enough information regarding the case to be able to identify what action was requested and where in the State the request was forwarded.

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

OCSE-PIQ-89-07
June 2, 1989

Robert C. Harris
Associate Deputy Director

Extension of Child Support Enforcement Services to Medicaid-Only Recipients (OCSE-AT-88-3)

Hugh F. Galligan
Regional Representative
Region I

This is in response to your memorandum of April 17, 1989, regarding the provision of all appropriate child support enforcement services to the Medicaid Assistance Only (MAO) eligible. Please note that since final regulations implementing section 9142 of the Omnibus Budget Reconciliation Act (OBRA) of 1987 (P.L. 100-203) have not been published, our response to your question is subject to change.

Question: Assuming the recipient refuses to cooperate in obtaining financial support, is the IV-D agency required, nevertheless, to proceed on the child's behalf? If so, in what authority would it do so if the recipient has assigned only rights to medical support and not full financial support?

Response: Section 1912(a)(1) of the Social Security Act requires the individual, as a condition of eligibility for medical assistance, to assign any rights to medical support, to cooperate in establishing paternity and in obtaining medical support and payments, and to cooperate in identifying and pursuing any third party who may be liable for medical support (unless there is a good cause determination for refusing to cooperate). Section 454(4)(A) of the Act requires the State IV-D agency to provide IV-D services to all families with an absent parent who have assigned their rights to medical support as a condition of receipt of Medicaid.

We propose in the Notice of Proposed Rulemaking (NPRM), published in the Federal Register on May 23, 1989, to revise 45 CFR 302.31 to specify that when a Medicaid-only applicant or recipient assigns medical support rights to the Medicaid agency, the IV-D agency must provide any appropriate IV-D services, unless the Medicaid agency determines that it is not in the best interests of the child(ren) to receive that IV-D service. In addition, the preamble to the NPRM provides that because Medicaid-only applicants and recipients are required to assign medical support rights to the State and cooperate in establishing paternity and obtaining support as a condition of eligibility for Medicaid, Medicaid-only

applicants and recipients may not refuse these IV-D services. Therefore, while the assignment is limited to medical support rights, Medicaid-only applicants and recipients may not refuse any appropriate IV-D services, because they are required to cooperate in establishing paternity and securing support, unless the Medicaid agency determines that it is not in the best interests of the child(ren) to proceed. However, if both Medicaid eligible and non-Medicaid children are in the household, the custodial parent should be permitted to decline IV-D services for the non-Medicaid eligible child(ren).

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

cc: Regional Representatives
Regions II-X

OCSE-PIQ-89-08

June 19, 1989

Robert C. Harris
Associate Deputy Director

Policy Interpretation Question: Conversion of Child Support Obligation to a Monthly Amount

Ann Schreiber
OCSE Regional Representative
Region II

This is in response to your memorandum dated April 19, 1989 regarding the conversion of a child support obligation to a monthly support obligation. Your question and our response are as follows:

Question: May a IV-D agency convert a child support obligation into a monthly amount as required by 45 CFR 302.51(a) using an "actual conversion methodology" which will result in varying obligation amounts from month to month?

Response: For purposes of distribution and redetermining eligibility in AFDC cases, States are required in OCSE-AT-76-5 dated March 11, 1976 to convert to a monthly amount support that is ordered to be paid more frequently than monthly. Conversion is necessary in AFDC cases to allow the IV-D agency to distribute support collections in accordance with §302.51(b)(1) through (3), and the IV-A agency to redetermine the family's eligibility for AFDC in accordance with 45 CFR 232.20(b). Conversion is also necessary in title IV-E foster care cases to allow the IV-D agency to distribute support collections in accordance with §302.52 (b)(1) and (2). Conversion is not required, but allowable, in other IV-D cases.

The IV-D agency has flexibility regarding the method it uses to convert child support ordered to be paid more frequently than monthly into a monthly amount as required by 45 CFR 302.51(a) and OCSE-AT-76-5. Therefore, the State may use the "actual conversion methodology" suggested in your memorandum (e.g., The absent parent has a weekly support obligation of $20. The monthly support obligation is $80 in a four week month, and $100 in a five week month), or any one of the conversion methods set forth on pages 1 and 2 of OCSE-AT-76-5.

cc: OCSE Regional Representatives
Regions I, III - X

OCSE-PIQ-89-09
Date: August 14,1989

From: Robert C. Harris
Associate Deputy Director

Subject: FFP Under Title IV-D For Title IV-E (Foster Care) Activities

To: Natalie deMarr
OCSE Regional Representative

This is in response to your request for a policy interpretation regarding the availability of Federal financial participation (FFP) under Title IV-D for information and referral activities related to IV-D functions by employees administering the Title IV-E (Foster Care) program. You indicated that, in response to a cost allocation plan submitted by Washington State, your office has submitted comments to the Division of Cost Allocation stating that, although these information and referral activities are related to the IV-D function, they are costs of administering the IV-E program and not chargeable to the IV-D program.

Question: Is FFP available for information and referral activities related to IV-D functions for work done by employees administering Title IV-E programs?

Response: Section 455 of the Social Security Act (the Act) and implementing regulations at 45 CFR Part 304 authorize FFP for necessary expenditures under the IV-D State plan, not in the costs of activities conducted by employees administering the Title IV-E State plan. Although some of the activities performed by IV-E employees may be related to providing information or referring cases to the IV-D agency to establish or enforce a child support obligation, FFP under Title IV-D of the Act is not authorized for expenditures under the IV-E program.

At the inception of the IV-D program in 1975, the AFDC foster care program was administered under title IV-A of the Act. Regulations were published at that time at 45 CFR 304.23(a) which provided that FFP under title IV-D of the Act was not available for activities related to administering title IV-A of the Act. Subsequently, P.L. 96-272, the Adoption Assistance and Child Welfare Act of 1980, transferred the AFDC foster care program from title IV-A to a new title IV-E of the Act. Although §§304.23(a) and (f) have not been amended to add specific reference to title IV-E program activities, FFP under the IV-D program is not available for performing IV-E activities.

OCSE-PIQ-89-10

Date: August 23, 1989

From: Robert C. Harris
Associate Deputy Director

Subject: Response to Request for Clarification of Medical Support Enforcement Requirements

To: Guadalupe Salinas
OCSE Regional Representative
Region VIII

This is in response to your May 23, 1989 request for an interpretation of Medical Support Enforcement Requirements. Your questions and our responses are as follows.

1. Question: In which cases must the State obtain medical support information as required by 45 CFR 306.50(a)? What is the meaning of "if the information is available or can be obtained" as referenced in that section?

Response: The State must obtain medical support information required by 45 CFR 306.50(a) as follows. We agree that, effective December 2, 1985, the requirements of 45 CFR 306.50 apply to any IV-D case regardless of whether an order has been established or whether that order includes a provision for medical support. The date the order was issued is not the important variable. For AFDC and IV-E cases, the regulation at 45 CFR 306.50(a) applies to any open case at the IV-D agency after December 2, 1985. However, for non-AFDC cases, the IV-D agency would need to obtain the information for cases in which individuals applied and the case was initiated after December 2, 1985, because the IV-D agency must obtain the non-AFDC applicant's consent (if not on Medicaid) to provide medical support services.

You also ask what the phrase "if the information is available or can be obtained" in 45 CFR 306.50(a) means. You refer to a phrase in the proposed regulations published August 4, 1983, which stated that the information can be obtained "during the regular processing of a IV-D case." You state that, despite the fact that this language was deleted in the final rule, you believe that the original intent had not changed, (i.e., the impact on the IV-D agencies would be minimal and information would be obtained only if readily available during normal case processing.)

The phrase "during the regular processing of a IV-D case" was deleted from the proposed wording of 45 CFR 306.50(a) to clarify that medical support enforcement is an integral part of IV-D case processing. Section 306.50(a) clearly requires that, if the IV-A or IV-E agency does not provide the medical support information to the Medicaid agency and the information is available or can be obtained in a IV-D case in which an AFDC or IV-E foster care assignment is in effect, the IV-D agency must obtain the information. If the medical support information is not already in the IV-D case record, the IV-D agency must attempt to obtain the needed information, by contacting appropriate sources of information, such as the absent parent, the custodial parent, the IV-A or IV-E agency, the absent parent's employer, and the Federal and State Parent Locator Services. The IV-D agency activity may not be limited to seeking medical support information only if the absent or custodial parent or employer are contacted for other reasons.

2. Question: If an order was established prior to December 1985 and generally requires the obligor to pay medical, dental or optical costs, what activities were required of the IV-D agency under the original medical support regulations?

Response: The IV-D agency has medical support enforcement responsibilities for cases with child support orders established before December 1985. An order established prior to December 1985 may (1) contain the words "health costs", without specifying a sum certain, as opposed to "health insurance" or (2) require the responsible person to pay "all" medical costs. The collection function for these cases would fall under the jurisdiction of the State Medicaid Agency. However, the IV-D agency must inform the Medicaid Agency that the responsible person is required to pay these costs.

Also a child support order established prior to December, 1985 may refer to health costs or medical support and contain a sum certain. For example, the order may require the responsible person to pay a certain percentage of the monthly support obligation for medical care. For these cases, the IV-D agency must attempt to collect

the medical support as part of the related child support obligation.

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

OCSE-PIQ-89-11

Date: October 20, 1989

From: Robert C. Harris
Associate Deputy Director

Subject: State Option to Pursue Unreimbursed Public Assistance in Interstate Cases

To: Sharon Fujii
OCSE Regional Representative

This is in response to your memorandum of June 12 regarding the pursuit of unreimbursed public assistance which has been raised as an issue in your dealings with California. Your office and California both agree that recovery efforts may not be precluded by responding States in arrearage only cases where the arrearage occurred as a result of an enforceable support order. You seek clarification regarding the responding State's responsibilities where the initiating State is seeking to collect unreimbursed public assistance which has not been reduced to a judgment for support.

It is our understanding that California does not seek judgments for support in intrastate cases of unreimbursed public assistance-only, where the amount of such liability debts to the State is less than $1,000. Consequently, California has refused to seek collection of such debts owed to other States where the debt is less than $1,000.

As set forth in PIQ-88-19, a State need not pursue collection of unreimbursed public assistance debts owed to another State which were incurred during the period the custodial parent was receiving assistance, but where no support order was ever established. In addition, as discussed in PIQ 88-18, the collection of unreimbursed public assistance in the absence of a court or administrative order for support or a judgment for support in the amount of the unreimbursed assistance is not an allowable IV-D function. However, if a State seeks reimbursement for the AFDC it has provided by suing the absent parent for back support in intrastate cases and it has statutory authority to bring such actions on behalf of other States, then such services are an allowable IV-D function of the State and should be provided.

In this instance, California's policy provides for pursuit of a support order for unreimbursed public assistance in intrastate cases where the unreimbursed assistance equals $1,000 or more, and it has the

authority to take such actions on behalf of other States. Regulations at 45 CFR 302.36(a) require that a State extend the full range of services under its IV-D State plan to any other State, including the establishment of support obligations. Therefore, California is required to extend its own intrastate policy regarding unreimbursed public assistance to other States. This would include, in California's situation, the pursuit of a judgment for child support in cases involving $1,000 or more owed to another State for unreimbursed public assistance and the refusal to pursue such cases where the amount was less than $1,000. Since a State's pursuit of a judgment for child support for unreimbursed public assistance only is not a mandatory service under Title IV-D, States may establish a threshold below which amounts collected are not considered substantial. The recently issued case closure criteria at 45 CFR 303.11(b)(1) and (2) permit the closing of IV-D cases where there is no longer a current support order and arrearages are under $500 or unenforceable under State law. Since the issue at hand involves cases where no support arrearage as yet exists, it is acceptable for California to set an amount higher than $500 beyond which it would not seek to establish support judgments involving unreimbursed public assistance.

We do not currently have information regarding which States pursue recovery of public assistance. However, Marion Steffy, as the Lead RA for Child Support, has offered to contact each regional office to gather such information regarding State practices, and will disseminate the results when completed.

cc: OCSE Regional Representatives
Regions I - VIII and X

OCSE-PIQ-89-12
November 13, 1989

From: Robert C. Harris
Associate Deputy Director

Subject: Treatment of Program Income

To: OCSE Regional -Representatives
Regions I through X

OCSE-AT-89-16 dated August 15, 1989 (copy attached), sets forth OCSE policy regarding the treatment of fees, interest and other income resulting from Child Support Enforcement activities under Title IV-D of the Social Security Act. The AT supersedes the policy set forth in PIQ-88-16 dated December 12, 1988, regarding the treatment of interest earned on fees and other income.

Therefore, the PIQ is rescinded.

Attachment

OCSE-PIQ-89-13
Date: November 13, 1989

From: Robert C. Harris
Associate Deputy Director

Subject: Federal Funding on Indian Reservations

To: Guadalupe Salinas

This is in response to your memorandum of October 13 regarding a request from Marcellus Hartze, North Dakota IV-D Director, for clarification of OCSE policy as stated in our August 14 letter to South Dakota regarding the provision of IV-D services on Federal Indian reservations.

Mr. Hartze is concerned that our August 14 letter to Mr. Terry Walter, Program Administrator of South Dakota's Department of Social Services, calls into question the validity of three agreements which North Dakota has with tribal entities: two cooperative agreements between tribes and county social services boards and a purchase of service contract with a private attorney to provide IV-D services on a reservation. He questions whether Federal funding is available for these agreements and contracts unless the tribe has adopted all the mandatory provisions required of states under title IV-D of the Social Security Act (the Act).

We are aware that no tribal government has as yet adopted all title IV-D provisions. However, unlike other sections of the Social Security Act (the Act) which provide direct funding of tribes as well as States, title IV-D provides Federal payments solely to States. As a condition for funding, states must meet the requirement at section 454(l) of the Act that the child support enforcement program be operated on a statewide basis. In an attempt to conform to this requirement, several states, most notably North Dakota, have entered into agreements with tribal entities to provide child support enforcement services. The Constitution, numerous court decisions, and Federal law clearly reserve to Indian tribes important powers of self-government, including the authority to make and enforce laws, to adjudicate civil and criminal disputes (including domestic relations cases), to tax, and to license. Therefore, most tribes do not recognize State jurisdiction in many matters of law. Consequently, most of the arrangements for child support services on tribal lands involve a specific tribal agreement to recognize the State or county jurisdiction on tribal lands for the narrow purpose of child support enforcement.

The cooperative agreement between the Turtle Mountain Band of Chippewa Indians and North Dakota's Rolette County Board of supervisors contains the following provision:

The Turtle Mountain Band of Chippewa Indians agree to cooperate

and support the Child Support Enforcement activities initiated by the Rolette County Board of Social Services. The support and cooperation referred to relates to the establishment, collection, and enforcement of child support on behalf of children whose eligibility for Aid to Families With Dependent Children (AFDC) is based on the continued absence of the parent from the home and the establishment of paternity for those AFDC cases which include a child born out-of-wedlock; and, for those non-AFDC individuals who have made application for these services.

The Rolette County Board, in turn, agreed to operate its program in conformance with IV-D requirements and agreed "to provide such staff, equipment, and financial costs as may be deemed by the Board to be necessary and practical in the facilitation of the enforcement and collection of child support on the Turtle Mountain Indian Reservation."

The above approach is workable and Federal financial participation (FFP) is available for services conducted under such agreements when the services are conducted by a State or local agency which meets the requirements at 45 CFR 302.12 as part of the State's single and separate organizational unit. In the above example, the Turtle Mountain Band of Chippewa agreed to allow the local IV-D agency, the Rolette County Board of Social Services, to extend IV-D procedures to the reservation. Consistent with this approach, some tribes, although they do not provide for any form of garnishment or wage withholding in tribal law, allow the local IV-D agency to apply State procedures for wage withholding for obligors who reside on tribal lands.

A problem arises when such IV-D procedures are in direct conflict with existing tribal law or procedures. As referenced in Mr. Walter's correspondence, some tribal laws allow paternity actions to be initiated only before the child reaches the age of two years, whereas IV-D requirements provide that paternity actions must be allowed at least up to the age of 18. As discussed in our August 14 letter, States should attempt to convince tribal entities of the value of the processes mandated under Federal law. In any event, paternity actions must continue to be pursued whenever jurisdiction can be obtained over the accused father, i.e., when he resides, works or can be served with legal process off of the reservation. The case would meet audit requirements if the State took such appropriate action despite the limitations of tribal law.

A cooperative agreement between the IV-D agency and a tribal entity, in which the IV-D agency delegates any of the functions of the IV-D program to the tribal entity, would have to meet the requirements for cooperative agreements as described at 45 CFR 302.34 and 303.107. More specifically, the agreement must specify that, in accordance with 45 CFR 303.107(c), the tribal entity will comply with title IV-D of the Act. This requirement is in effect for all new cooperative arrangements effective October 1, 1989, and for all existing arrangements effective October 1, 1990.

With regard to purchase of service agreements, if such agreements are drawn in such a way as to cover specific activities which are consistent with IV-D requirements and enforceable on tribal lands, such agreements would be eligible for FFP.

To reiterate, when a function under Title IV-D is delegated by the single and separate State IV-D agency to be performed by another entity, the entity to which the IV-D function is delegated must carry out the function in compliance with all relevant Federal requirements. Only under these circumstances is Federal reimbursement under Title IV-D available to the delegate agency for performing IV-D functions. In neither of the two instances cited by North Dakota is a tribal entity providing IV-D services or receiving FFP for so doing. Therefore, although the North Dakota IV-D agency has an agreement to cooperate with the Turtle Mountain Chippewa, the
agreement is not a cooperative arrangement per 45 CFR 302.34 and 303.107. Furthermore, if the tribe is willing to allow State IV-D personnel to pursue child support enforcement on the reservation pursuant to Federal requirements, it is not necessary for tribal law to conform to Federal requirements in order for the State IV-D agency to receive FFP.

In the purchase of services, if the attorney so contracted is taking action to establish paternity or establish or enforce support in tribal court under tribal laws governing that action that do not comport with Federal requirements, FFP is not available. States should ensure that any contract or agreement requires that actions be taken in accordance with IV-D requirements. For example, if the purchase of services contract or agreement only applies to the programmatic function of paternity establishment, it is sufficient for FFP purposes if tribal law pertaining just to paternity establishment complies with all title IV-D requirements.

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

OCSE-PIQ-89-14
Date: December 1, 1989

From: Robert C. Harris
Associate Deputy Director

Subject: Recovery of Costs and Fees

To: Sharon M. Fujii
OCSE Regional Representative
Region IX

This is in response to your memorandum dated September 29, 1989 regarding the questions raised by California on the recovery of costs and fees in a letter to John Codington dated August 1, 1989.

The State's questions and our responses are as follows:

Question 1: May the counties continue to collect the cost of laboratory testing from the putative father even though California has elected not to recover costs in excess of fees?

Response: Section 111(c) of P.L. 100-485, the Family Support Act of 1988, effective November 1, 1989, amended section 454(6) of the Social Security Act to allow States to impose a fee for performing genetic tests on any individual who is not an AFDC recipient. Section 454(6) specifies three fees in non-AFDC cases: it requires States to charge an application fee to anyone who applies for IV-D services; and it allows States to charge fees for Federal income tax refund offset and for genetic testing. In addition, the statute indicates that a State may recover any costs in excess of the fees so imposed. Therefore, a State may charge a fee under this provision regardless of whether it has elected to recover costs under Federal regulations at 45 CFR 302.33(d). However, we would point out that final regulations governing imposition of fees for genetic testing have not been issued and may impose specific requirements with respect to imposition of such fees.

Question 2: Can the counties sue for attorneys' fees when the absent parent has the ability to pay when California has elected not to recover costs?

Response: While Federal regulations do not prohibit the States from charging fees other than those mentioned in section 454(6) of the Act, if fees (other than those specified in section 454(6)) are imposed which result in recovery of costs tied to administrative costs included under IV-D State plan, they may be collected only if the State has elected to recover costs under section 454(6) of the Act. Any fees, including attorneys' fees, imposed (other than those specified

in section 454(6)) which result in recovery of costs under the IV-D plan must meet the conditions set forth in 45 CFR 302.33(d) for cost recovery in non-AFDC cases. For example, attorneys' fees for IV-D attorneys or attorneys working under contract for the IV-D agency would be costs which must meet the conditions of 45 CFR 302.33(d).

Question 3: Must laboratory testing and attorneys' fees be collected in all cases, all non-AFDC cases, or only when there is a demonstrated ability to pay (AFDC, non-AFDC, or both)?

Response: If the State elects to collect fees for genetic testing, it must do so in accordance with Statewide standards and applicable final Federal regulations when they are issued. If the final Federal regulations permit, such standards could specify fees would only be collected in IV-D (AFDC and non-AFDC) cases in which there is a demonstrated ability to pay. However, in the case of attorneys' fees, a State may collect attorneys' fees which result in recovery of costs tied to administrative costs under the IV-D State plan, only if the State has elected to recover costs under 45 CFR 302.33(d). Under that section, the State is required to collect on a case by case basis either excess actual or standardized costs from the absent or custodial parent in non-AFDC cases. A State that recovers standardized costs must develop a written methodology to determine standardized costs which are as close to actual costs as is possible. Therefore, attorneys fees which result in recovery of costs under the IV-D program must be collected in all non-AFDC cases as part of a State cost recovery plan under section 454(6) of the Act and may not be tied to a demonstrated ability to pay.

Question 4: Are counties allowed to collect the following items from the non-custodial parent: 1) witness fees and travel expenses; 2) fees paid for court interpreters; 3) testimony and consultation fees for experts: and 4) other costs related to court time and litigation?

Response: If costs and fees, such as those listed in the question, result in recovery of costs tied to administrative costs included under the IV-D State plan, counties may collect them from the non-custodial parent only if the State has elected to recover costs from either the custodial or noncustodial parent under 45 CFR 302.33(d). If the State has elected to recover costs from the custodial parent, the IV-D agency may, in accordance with 45 CFR 303.33(d)(4), seek reimbursement from the noncustodial parent of any costs paid by the custodial parent and pay all amounts reimbursed to the custodial parent.

Question 5: Federal regulations appear to only address fees

and recovery of costs for non-AFDC cases. What is the intent for AFDC cases?

Response: Although there are no specific Federal regulations on fees and recovery of costs in AFDC cases, if the State recovers any fees or costs from the non-custodial individual in AFDC cases, the State must do so in accordance with other applicable Federal law and regulations, State law and Statewide standards.

Question 6: Must the counties seek to recover permitted costs in all cases, or only when there is a demonstrated ability to pay?

Response: If the State elects to recover costs in non-AFDC cases, the State must do so in accordance with 45 CFR 302.33(d). See also response to Question number 3.

Question 7: Is there any clear delineation of what is, or is not, an "administrative cost" for the purposes of 45 CFR 302.33(d)?

Response: The term "administrative costs," as used in 45 CFR 302.33(d), includes any costs which are incurred at the State or local level in the provision of child support enforcement services in IV-D cases under the IV-D State plan.

Finally, California FSD Letter 89-16 indicates that if the State elects to recover costs under 45 CFR 302.33(d), the State must recover all costs incurred in excess of any fees collected to cover administrative costs under the IV-D State plan. The State has the flexibility to determine which costs it will recover and, therefore, need not recover all costs in excess of fees collected. Regulations at section 302.33(d)(1) specify that the State may recover any costs incurred in excess of any fees collected (emphasis added). The regulations do not require States which opt to recover costs to recover all costs incurred.

cc: OCSE Regional Representatives
Regions I - VIII and X