

ACF

Administration
for Children
and Families

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Administration for Children, Youth and Families

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INFORMATION MEMORANDUM

TO: STATE AGENCIES ADMINISTERING OR SUPERVISING THE ADMINISTRATION OF TITLES IV-B and IV-E of the SOCIAL SECURITY ACT

SUBJECT: Notice of Proposed Rule Making (NPRM) Dated September 19, 1984 from the Office of Child Support Enforcement and Implementation of Section 471(a)(17) of Title IV-E

LEGAL AND RELATED REFERENCES: P.L. 98-378, Child Support Enforcement NPRM and Section 471(a)(17) of title IV-E.

INFORMATION: P.L. 98-378, Child Support Enforcement Amendments of 1984, amended title IV-D of the Social Security Act. It also amended title IV-E, section 471(a) by adding the following paragraph to the State plan requirements: "(17) provides that, where appropriate, all steps will be taken, including cooperative efforts with the State agencies administering the plans approved under parts A and D, to secure assignment to the State of any rights to support on behalf of each child receiving foster care maintenance payments under this part." These amendments became effective October 1, 1984 and are applicable to collections made on or after that date.

The attached Notice of Proposed Rule Making (NPRM) from the Office of Child Support Enforcement discusses on pages 36791 and 36792 the implementation of the proposed collection and distribution of support in foster care maintenance cases. The State title IV-D agency is required to pursue support payments on all title IV-E foster care cases where Federal funding is involved and an assignment has been made. It is the responsibility of the title IV-E Foster Care agency to refer all cases with assignments to the title IV-D agency and to ensure that funds collected are appropriately managed. The title IV-D agency may also pursue support for foster care cases which do not involve Federal funding. It is recommended that each State title IV-E agency arrange a meeting with the State title IV-D agency to clarify the assignment of title IV-E case procedures and determine whether and under what conditions the agency will pursue support payments for cases not receiving Federal funding. This recommendation is based upon the fact that there is variation in State laws and regulations governing the operation of the title IV-D agency. Each quarter, States must also report to ACYF the title IV-E foster care collections

made as an adjustment to expenditures. In addition, when Form OCSE-34 (now under revision to incorporate title IV-E Foster Care) is finalized and approved by OMB, it will be sent to all States for their use in reporting.

INQUIRIES TO: Regional Program Directors, ACYF, Dodie Livingston, Commissioner,
Attachment Wednesday September 19, 1984

FEDERAL REGISTER: Part IV Department of Health and Human Services Office of Child Support Enforcement 45 CFR Parts 301, 302, 303, 304, 305, and 307 Child Support Enforcement Program; Implementation of Child Support Enforcement Amendments of 1984; Proposed Rule 36780 Federal Register/Vol. 49, No. 183/Wednesday, September 19, 1984/Proposed Rules DEPARTMENT OF HEALTH AND HUMAN SERVICES Office of Child Support Enforcement 45 CFR Parts 301 302, 303, 304, 305, and 307 Child Support Enforcement Program; Implementation of Child Support Enforcement Amendments of 1984 AGENCY: Office of Child Support Enforcement (OCSE), HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: These proposed rules would implement the Child Support Enforcement Amendments of 1984 (Pub. L. 98-378), which amend title IV-D of the Social Security Act (the Act). A new section 466 of the Act requires all States to enact laws requiring the use of certain procedures in their Child Support Enforcement programs. The procedures are: income withholding; expedited processes for establishing and enforcing child support obligations; State income tax refund offsets; liens against property; extended paternity statute of limitations; imposition of security, bond or guarantee; providing information to consumer reporting agencies; and including provision for withholding from wages in child support orders issue or modified in the State. These proposed rules prescribe the requirements a State must meet in order to be in compliance with section 466. Also they set forth the basis on which an exemption from certain provisions of the new law will be granted. This section is effective October 1, 1985. The new law replaces the current incentive to States equal to 12 percent of AFDC collections with a new system, effective October 1, 1985, which will reward States based on both AFDC and non-AFDC collections. These proposed rules set forth the requirements of that new system. These proposed regulations also implement the statutory provision which reduces Federal funding to States for administrative costs under the Child Support Enforcement program from 70 to 66 percent at a rate of two percent every other year beginning in FY 1988.

The Statute also authorizes 90 percent funding for the costs of hardware in the operation of computerized support enforcement systems as of October 1, 1984. The new law requires States to collect and distribute child support in cases where they are making foster care maintenance payments under title IV-E of the act, as of October 1, 1984. These proposed rules detail requirements for support collection and distribution by IV-D agencies in foster care maintenance cases. The amended statute extends the Federal tax refund offset process to permit collection of past-due support owed beginning in tax year 1985 for AFDC individuals. These proposed regulations would implement that process.

Finally, these proposed regulations would implement additional statutory provisions which: require State to continue to collect support payments without requiring an application or imposing an application fee when an AFDC family ceases to receive assistance payments; delete the requirement that States exhaust all State parent locator resources before submitting a request to the Federal Parent Locator Service (PLS); require States to collect spousal support if it is included in the child support order; require States to publicize the availability of support enforcement services; require States, at least annually, to send a notice of support payments collected to AFDC recipients; require States to establish guidelines for child support award amounts within the State; permit States to impose late payment fees on individuals who owe overdue support; permit States to track and monitor support payments in through public agencies upon request; and require the Governor of each State to appoint a State Commission on Child Support. These sections have varying effective dates.

DATES: Consideration will be given to comments received by November 19, 1984. Public hearings will be held on October 10, 12, 15, and 17, 1984. For times and locations see Supplementary Information.

ADDRESSES: Address comments to
Director, Office of Child Support Enforcement,
Department of Health and Human Service, Room 1010,
6110 Executive Boulevard,
Rockville, Maryland 20852.

Comments will be available for public inspection Monday through Friday, 8:30 a.m. to 5:00 p.m., in Room 1010 of the Department's office at the above address. For locations of public hearings see Supplementary Information.

FOR FURTHER INFORMATION CONTACT: At (301) 443-5350 Pierre Mooney (Mandatory State procedures, foster care) Marianne Rufty (Reduced Federal funding levels, incentive payments, public hearings) Mike Fitzgerald (90 percent funding for automated systems hardware) Carol Jordan (Remaining provisions)

SUPPLEMENTARY INFORMATION

Public Hearings

To obtain the broadest public participation possible on these proposed rules, we will conduct four public hearings on the dates and at the times and locations listed in the chart below. Any individual who wishes to comment on the contents of this document at any of the hearings must register at least three days prior to the hearing with the appropriate Regional office contact designated on the chart below. At the time of registration, we ask that prospective participants give identifying information such as name, organization, if any, address and telephone number to the Regional Office contact so that participants can be properly introduced at the hearing. Comments must be limited to these proposed rules, their implementation, and specific recommendations for change within the constraints of the new law and the Act. Keep in mind that where the statute is explicit, the corresponding regulations will offer be reiteration of the statute. Since we have no authority to change the statute, your presentations and written

comments should address only those areas where the statute provides discretion and where we have authority to change the corresponding regulations. Presentations are limited to 10 minutes. In addition, we encourage participants, to submit written comments in support of their oral presentations to the Regional Office contact at the address given in the chart below. We will also accept written comments at the hearings from any participants who would like to submit them. Written comments from individuals not planning to participate in the hearings should be submitted to the address given above for other comments. To clarify presentations, we may ask questions. We cannot, however, address participant's concerns regarding these proposed regulations or respond to questions at the hearings. Instead, we will consider comments and recommendations received at the public hearing and written comments, suggestions and recommendations received at the address given above in the final version of these rules. 36781 Federal Register/Vol. 49, No. 183/Wednesday, September 19, 1984/Proposed Rules

Location of public Regional Office, Date and time hearing contact and address

Oct 10, 1984, Dirksen Federal Bldg.,
Mr. Kent Wilcox (or)
8:30 a.m. Court Room 2525,

Ms. Gwen Hardaway,
219 South Dearborn, Region V, Office of Chicago,
IL 60604

Child Support Enforcement,
10 West Jackson Blvd., 4th floor,
Chicago, Illinois 60604,
Phone:(312)886-5425.
Oct. 12, 1984,

Ms. Tomasis Pinter,
Dallas City Hall
8:30 a.m. Council Chambers,
Region VI, Office of Child Support Enforcement,
1500 Marilla Room 8-A-20, 110,
Dallas, TX 75201

Commerce Street,
Dallas, Texas 75242,
Phone (214)-767-3749.
Oct. 15, 1984 Seattle Center,

Mr. Vince Herberholt (or) Ms. Charlene
8:30 a.m. Mercer Street
Between 3rd & 4th Allen, Region X, Avenue North, Mercer Office of Child Forune, Room I and
Support Enforcement,II, Seattle, WA Third & Broad Bldg., 96121 Mail Stop 415,
Seattle, Washington 98121

Phone: (206) 442-0943. Oct. 17, 1984, Dept. of Health and Ms. Catherine 8:30 a.m. Human Services, McAuliffe, DHHS, North Auditorium, Office of Child Room 1081, 330 Support Enforce- Independence Ave., Room 1010, SW., Washington, 8110 Executive Blvd. D.C. 20201 Rockville, Maryland 20852, Phone: (301) 443-1981. 36781 Federal Register/Vol. 49, No. 183/Wednesday, September 19, 1984/Proposed Rules If additional copies of this document are needed, please contact the National Reference Center by calling 301-443-5106 or write: National Reference Center, Office of Child Support Enforcement, 6110 Executive Boulevard, Rockville, Maryland 20852.

Introduction

This notice of proposed rulemaking implements those statutory provisions which require regulation with several exceptions. Revisions to the audit, compliance and penalty provisions of the Act will be implemented in a separate proposed rule. The requirements that the Secretary publish regulations requiring State IV-D agencies to petition to include medical support as part of any child support order whenever health care coverage is available to the absent parent at a reasonable cost will be implemented in final regulations about to be published by the Department. The requirement that States must continue to provide Medicaid benefits for four calendar months beginning with the first month of AFDC ineligibility will be published in a separate rule. Revised section 454(6)(B) of the Act, which requires the State to charge a mandatory application fee, not to exceed \$25, for furnishing IV-D services to individuals who are not AFDC applicants or recipients, will be implemented in final regulation son recovery of costs in on-AFDC cases (see notice of proposed rulemaking at 48 FR 41450, September 15, 1983). We do not address special project grants to promote improvements in interstate enforcement or extension of the demonstration authority under section 1115 of the Act to State Child Support Enforcement programs in these proposed regulations because we do not believe regulatory action in these areas is necessary at this time.

In addition, statutory changes involving modifications in the content of the Secretary's annual report and availability of social security numbers are not included in these proposed rules because we believe current regulations adequately cover these provisions. The remaining major segments of the law requiring regulation are discussed separately in these proposed rules. The effective dates for each statutory provision are set forth within the appropriate discussion. The Child Support Enforcement Amendments of 1984 are comprehensive amendments to the Act. For the most part, these proposed regulations parallel explicit statutory provisions. In drafting these proposed regulations, we attempted to give States flexibility, within the framework of the Act, to vary their legislative and administrative structures in response to different State program needs. Mandatory State Procedures Since the inception of the Federal Child Support Enforcement program there has been a marked difference in the level of success of the programs operated by the various States. In the nine years the Federal program has been in existence, certain procedures which have noticeably increased the effectiveness of State programs have been identified. As a result of this experience, Congress has enacted sections 454(20) and 466 of the Act to require all State to implement these proven procedures by October 1, 1985. However, if a State demonstrates to the Secretary that State legislation is required to conform the State plan

to one or more of the requirements of the new statute, the State's plan shall not be regarded as failing to comply solely by reason of its failure to meet the requirements imposed by the new amendments until four months after the end of the first session of the State's legislature which ends on or after October 1, 1985.

These proposed regulations:

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

State Plan Requirements (302.70) A new 45 CFR 302.70 contains the State plan requirement for the use of mandatory practices to improve program effectiveness as specified in the new paragraph 454(20) of the Act. The definition of "overdue support" from the new section 466(e) of the Act that is applicable to all mandatory practices is added to the general definitions section found in 45 CFR 301.1. "Overdue support" means a delinquency pursuant to an obligation determined under a court order, or an order of an administrative process established under State law, for support and maintenance of a minor child which is owed to or on behalf of the child or for the absent parent's spouse (or former spouse) with whom the child is living, if and to the extent that a spousal support obligation has been established and the child support obligation is being enforced under the State's IV-D plan. At the option of the State, overdue support may include amounts which otherwise meet the definition in the previous sentence, but which are owed to or on behalf of a child who is not a minor child. The option to include support owed to children who are not minors applies independently to the four procedures to which overdue support applies under section 466 (i.e., State income tax offset, liens against property, giving security or posting a bond to guarantee payment of support, and making information available to consumer reporting agencies). Under proposed 302.70(a), a State plan for child support enforcement must provide that the State has in effect and has implemented laws and procedures specified with section 466(a) of the Act for:

1. Carrying out a program for the withholding of amounts from the wages of individuals to comply with support orders;
2. Establishing and enforcing support orders by expedited processes;
3. Obtaining overdue support from State income tax refunds in cases where support is assigned to the State under sections 402(a)(26) or 471(a)(17) of the Act and where support is collected under section 454(6) of the Act;
4. Imposing liens against real or personal property for amounts of overdue support;
5. Establishing a child's paternity up to the child's 18th birthday;
6. Requiring the absent parent to give security, post a bond or give some guarantee to secure payment of overdue support;

7. Making available to consumer reporting agencies at their request information regarding the amount of support owed by an absent parent if the amount is more than \$1,000 or at the option of the State if the amount is less than \$1,000;
8. including a provision for wage withholding in child support orders issued or modified in the State. Section 466 requires States to use procedures 3,4,6 and 7 except when they determine that the procedures are inappropriate in an individual case.

Using guidelines generally available in the State, States must take into account the payment record of the absent parent, the availability of other remedies, and other relevant considerations in determining whether use of a particular procedure is inappropriate in an individual case. We have implemented this requirement in proposed 302.70(b). Under 302.70(c), State laws enacted to implement these effective practices must give States sufficient authority to comply with the requirements contained in 45 CFR 303.100 through 303.105. We have not included a section under Part 300 of the regulations on paternity establishment up to the child's 18th birthday because including the requirement under 302.70 is adequate to regulate this mandatory procedure. The new section 466(d) of the Act allows the Secretary of HHS to grant a State (or a political subdivision with respect to expedited process) an exemption from enacting and using any of the procedures mandated by the new law if the State demonstrates that the procedure would not increase the effectiveness and efficiency of the State's Child Support Enforcement program. Such demonstration must be supported through the presentation of data pertaining to caseloads, processing time, administrative costs, average support collections or other actual or estimated data that the Secretary may require. The Secretary will review the exemption periodically and terminate it if circumstances, including effectiveness, should change. We are proposing in the new 302.70(d)(1) that a State may request an exemption from the State plan requirements of paragraph (a) by submitting a request for exemption to the appropriate Regional Office. Under this process, a State may also request an exemption from the requirement for expedited process for a political subdivision of the State. Under 302.70(d)(2), we propose that the Secretary will grant an exemption for up to three years upon a clear demonstration by the State that compliance would not increase the effectiveness and efficiency of its Child Support Enforcement program. We are proposing that to support an exemption, the information required by the new section 466(d) of the Act must be provided and documented by the State. Because the Congress has given the Secretary discretion to determine whether or not to grant an exemption, disapproval by the Secretary of a request for exemption is not subject to appeal. The proposed 302.70(d)(3) provides for review by the Secretary and termination of the exemption for the State (or political subdivision in the case of expedited process) if the State cannot demonstrate that it continues to warrant an exemption in accordance with paragraph (d). Under proposed paragraph (d)(4), a State must request an extension of an exemption 30 days prior to the end of the exemption period granted by the Secretary by submitting current data that demonstrates that compliance with the required procedure will not in case the efficiency and effectiveness of its Child Support Enforcement program. We will issue an action transmittal to States containing instructions for requesting an exemption.

Procedures for Wage or Income

Withholding (303.100)

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

The second procedures, required by section 466(a)(8) of the Act, must provide that all new or modified orders issued in the State include a provision in the order for wage withholding when an arrearage occurs. The intent of the second required State procedure is to ensure that orders not being enforced through the IV-D agency will include in them the authority necessary to permit wage withholding to be initiated by someone other than the IV-D agency (e.g., a private attorney). The specific requirements for applying wage withholding that are set out for IV-D cases do not apply to wage withholding that ensues solely from the inclusion of a wage withholding clause in an order. States are free to establish the conditions and procedures to be applied for wage of withholding for cases not being enforced through the IV-D agency. It is likely that most States will conform these conditions and procedures to those required to be used for IV-D cases. Should the conditions and provisions of the two required procedures differ, however, the procedures required to be used for IV-D cases must be applied in IV-D cases. For example, if an order calls for withholding to begin when the arrearage amount equals the amount payable for two months in accordance with the State's procedure for orders not being enforced under title IV-D, withholding must still begin after one month's arrearage accrues in accordance with the State procedure that applies to all IV-D cases, if that order is now being enforced under the States IV-D plan. We propose implementing new sections 466(a)(1) and (8) and (b) of the Act which provide for withholding of income or wages of individuals who owe overdue support by adding a new section 45 CFR 303.100, Procedures for wage or income withholding. To implement section 466(b)(1) of the Act, the proposed 303.100(a)(1) requires that States must ensure that in the case of each absent parent subject to a support order in the State which is being enforced under the State plan, so much of his or her wages must be withheld as is necessary to comply with the order.

In addition to withholding the amount due for current support, proposed paragraph (a)(2) requires the State to withhold an additional amount of wages to be applied toward liquidation of arrearages. Proposed paragraph (a)(3) limits the total amount withheld for support and other purposes to an amount not to exceed the maximum permitted under section 303(b) of the consumer Credit Protection Act (15 U.S.C. 1673 (b)). In accordance with section 466(b)(2) of the Act, proposed 303.100(a)(4) requires that the State law be designed so that, in the case of a support order being enforced under the State plan, withholding occurs without the need for any amendment to the support order involved or any further action by the court or entity that issued it. This blanket provision of State law must apply to both existing and new support orders. Section 466(a)(8) of the Act and 303.100(h), which implements the second required State procedure discussed above, provide that new or modified support orders established after the effective date of the new law must have a specific provision for withholding. As stated earlier,

this is to ensure that withholding as a means of collecting support is available if arrearages occur without the necessity of applying for IV-D services. Notwithstanding, if a new or modified support order does not include a provision for withholding and the order is being enforced by the IV-D agency, withholding must occur as required in 303.100(a) through (g).

To implement the requirements under section 466(b)(3) of the Act for triggering withholding, proposed 303.100(a)(4) requires that the State take steps to begin withholding on the date on which the parent fails to make payments in an amount equal to one month's support obligation. This does not mean that the individual must miss paying the support obligation for one month. Any combination of unpaid support totaling month's accrued arrearages would trigger a withholding. Paragraph (a)(4) would also permit the State to take steps to implement the withholding at any earlier time that is in accordance with State law or that the absent parent may request. This means that a State could use withholding to collect support in all cases if it chose to do so. Section 466(b)(4) of the Act and proposed 300.100(a)(5) require that withholding be carried out in full compliance with all procedural due process requirements under the State's laws. Section 300.100(a)(6) requires States to have procedures for terminating the withholding promptly, in accordance with section 466(b)(10) of the Act. For instance, a State would terminate a withholding when there is no further support obligation or when the whereabouts of the child and custodial parent are unknown preventing the forwarding of payments.

In paragraph (a)(7), we propose to require States to have procedures for promptly refunding to individuals monies that have been improperly withheld. Under section 466(b)(4), States must provide notice to an individual before notifying the individual's employer concerning a withholding. The notice must inform the individual of the intent to withhold and of the procedures to follow to contest the withholding. An individual may contest the withholding only on the basis of a mistake of fact. If the individual contests the proposed withholding, the State must determine whether or not the withholding will occur and, if so, notify the individual, within no more than 45 days after the provision of the advance notice, of the timeframe within which the withholding is to begin. To implement these requirements, 303.100 (b) and (c) set forth the criteria that States must meet in giving advance notice and providing an opportunity to contest the withholding. In proposed paragraph (b)(1), States must provide advance notice to the absent parent of the delinquency of support payments and the potential withholding.

The notice must inform individuals:

1. of the amount to be withheld;
2. that the withholding applies to current and subsequent periods of employment;
3. of the methods available for contesting the withholding on the grounds that the withholding is not proper because of mistakes of fact;
4. of the period within which the State must be contacted in order to contest the withholding and that failure to contact the State within the specified time limit will result in the State notifying the employer to begin the withholding; and
5. of the actions the State will take if the individual contests the withholding. Although we are not specifying a period of time within which an individual must notify the State to contest the withholding, States should establish a standard time period (for example, 10

days) that would allow them to complete all required action within the statutory 45-day limit contained in paragraph (c).

As specified in section 466(b)(4) of the Act, proposed paragraph (b)(2) exempts from the advance notice requirements any State which has a withholding system in effect as of August 16, 1984, if the system provides, on that date and afterwards, any other procedures necessary to meet the State's procedural due process requirements. Paragraph (c) would require that States establish procedures for use when an absent parent contests a withholding. At a minimum, the procedures must provide that the State, within 45 days of giving advance notice to the individual, will:

1. Give the individual an opportunity to present his or her case;
2. decide if the withholding will occur based on an evaluation of the facts; and
3. notify the individual whether or not the withholding is to occur and if so, include in the notice the timeframe within which withholding will begin and the information provided to the employer in the notice required in paragraph (d).

When the absent parent does not contest the withholding or has exhausted all procedure established by the State in accordance with paragraph (c), the State must give notice of the withholding to the employer, in accordance with section 466(b)(6)(A) of the Act and 303.100(d). Clear Congressional intent in the Conference report indicates that Federal employees are subject to the withholding provisions of the new statute. Therefore, in cases involving Federal employees and members of the uniformed services, the notice to the employer must be directed to the appropriate designated official identified in: Appendix A of 5 CFR Part 581 for Federal employees; 32 CFR 54.6(g) of proposed regulations issued October 18, 1982 (47 FR 46297) for members of the military; 42 CFR 21.74 for members of the Public Health Service; and 33 CFR 54.07 for members of the Coast Guard. In cases involving members of the uniformed services, requests for withholding must meet the requirements in the above regulations. Section 466(b)(6) of the Act sets forth specific requirements with respect to notice to the employer as well as responsibilities of the employer and the State in withholding wages. To meet these requirements, the notice to the employer must contain the elements listed in the proposed 303.100 (d)(1). Under paragraph (d)(1)(i) the notice would require the employer to withhold the amount specified in the notice (and include a statement that the amount actually withheld for support and for other purposes may not be in excess of the amount allowed under section 303(b) of the Consumer Credit Protection Act.)

Under paragraph (d)(1)(ii), the notice would instruct the employer to pay the amount to the State (or other individual or entity that the State designates) at the same time the employee is paid. Under paragraph (d)(1)(iii), the State may allow the employer to deduct a fee established by the State and specified in the notice for the administrative costs of each withholding. Under this provision, the State must specify that the fee be withheld from the absent parent's wages in addition to the amount to be withheld to satisfy support. Under proposed paragraph (d)(1)(iv), the notice must state that the withholding is binding on the employer until further notice by the State. In addition, proposed paragraph (d)(1)(v) requires the notice to specify that the employer is subject to a fine for discharging, refusing to employ or taking disciplinary action against an individual because of a withholding. Proposed paragraph (d)(1)(iv) requires the notice to specify that, if the employer fails to withhold wages, the employer is liable for any amounts up to the

accumulated amount the employer should have held. In the proposed paragraph (d)(1)(vii), the withholding would have priority over any other legal process under State law against the same wages as required by section 466(b)(7) of the Act. This means that an employer must withhold amounts for support before complying with any other legal process imposed in accordance with State law.

In proposed paragraph (d)(1)(viii), employers may combine withheld amounts in a single payment for each appropriate agency requesting withholding and separately identify the portion of the payment which is attributable to each individual employee, in accordance with section 466(b)(6)(B) of the Act. In 303.100 (d)(1)(ix) to (d)(1)(xi) and (d)(2), we propose requirements that are not specified in the statute. Therefore, we are using the authority granted to the Secretary under section 1102 of the Act to propose some general requirements to facilitate withholding. Section 1102 authorizes the Secretary of HHS to publish regulations not inconsistent with the Act which may be necessary to efficiently administer the Secretary's functions under the Act. The proposed paragraph (d)(1)(ix) would require that in cases where there is more than one order for withholding against a single employee under 303.100 the employer must comply on a "first-come-first served" basis and must honor all withholdings to the extent that the total amount withheld from the absent parent's wages does not exceed the limits under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. 1673(b)). Paragraph (d)(1)(x) would require the employer to implement the withholding no later than the first period that occurs after 14 days from the mailing date on the notice. In paragraph (d)(1)(xi), we propose that employers must notify the State promptly of the termination of the individual's employment and provide the individual's last known address and the name and address of the individual's new employer, if known. We believe these requirements will ensure the proper implementation of withholding. Paragraph (d)(2) would require that, if the absent parent changes employment within the State while the withholding is in effect, the State must notify the new employer, in accordance with the requirements of paragraph (d)(1), that the withholding is binding on the new employer. Section 303.100(e) of the proposed rule outlines the procedures for the administration of withholding as provided by section 466(b)(5) of the Act. Under proposed 303.100(e)(1), a State must designate a public agency to administer withholding in accordance with procedures specified by the State for keeping adequate records to document, track and monitor support payments or establish or permit the establishment of alternative procedures for the collection and distribution of amounts withheld by an entity other than a designated public agency. Proposed paragraph (e)(2) requires the State designee under (e)(1) to distribute amounts withheld promptly in accordance with section 457 of the Act and related regulations.

A State may contract with private firms for the collection and distribution of withheld amounts. If a State contracts with a private firm, the State must reduce its IV-D expenditures by any interest earned by the firm on withheld amounts in the same manner as it would for interest earned on any other IV-D transactions. This is in accordance with section 455 of the Act. Under this requirement, a State may allow the firm to keep interest earned as payment for services provided, but the interest amount must be deducted from the State's IV-D expenditures. The new section 466(b)(8) gives a State the option to expand its withholding system to include withholding from forms of income other than wages in order to ensure that support owed by absent parents will be collected regardless of the nature of their income-producing activities. Proposed 303.100(f) implements this optional provision. Under proposed 303.100(g)(1), we are

implementing the requirement in section 466(b)(9) that States extend their withholding systems to include withholding in cases where the support orders were issued in other States. As specified in the statute, this provision is necessary to ensure that support owed to children and their custodial parents will be collected without regard to the residence of the absent parent. Although the requirements contained in proposed 303.100 (g)(2) through (g)(7) are not specifically required by the statute, we believe they are necessary for the proper implementation of the statute and to clarify the responsibilities of each State involved in an interstate withholding. We are, therefore, using the authority granted to us under section 1102 of the Act to impose these requirements.

In paragraph (g)(2), we propose to require that the State law require employers within the State's jurisdiction to comply with a withholding notice. Under paragraph (g)(3), we are proposing to require that once withholding in a particular case is required, the VI-D agency of a State where a support order is entered must notify the VI-D agency of any other State in which the absent parent is employed in order to ensure interstate withholding. We would require this notification to contain all the information necessary to carry out the withholding, including the amount to be withheld. Paragraph (g)(4) would require the State in which the individual is employed to implement withholding promptly upon receipt of the notice to withhold from the State where the order is entered. Since the State where the absent parent is employed must carry out the withholding with the employer, in paragraph (g)(5) we propose to require that State to provide the advance notice to the absent parent, the opportunity to contest the withholding and the notice to the employer. In addition in, under paragraph (g)(5), when an absent parent terminates employment within the State, that State must notify the State where the support order was entered that the absent parent is no longer employed in the State and provide the name and address of the absent parent and new employer, if known. This will allow the State where the support order was entered to notify the new State where the absent parent is currently employed to implement withholding. Under paragraph (g)(6), all procedural due process requirements of the State where the absent parent is employed would apply. Finally, paragraph (g)(7) would provide that, except for specifying when the withholding shall apply and the amount to be withheld, the law and procedures of the State where the absent parent is employed shall apply.

Expedited Processes

We propose to implement the requirements of the new section 466(a)(2) by adding a new 45 CFR 303.101, Expedited processes. In this proposed section we require States to have in effect and use expedited process for the establishment and enforcement of support orders. Paragraph (a) of 303.101 defines a number of terms applicable to the section. To implement the specific requirement of section 466(a)(2) of the Act, proposed paragraph (b)(1) requires States to have in effect and use either administrative or quasi-judicial processes to establish and enforce support orders. The State may use expedited processes for paternity establishment as well. A State may not simply enact a law authorizing the use of expedited process but must in fact use it in lieu of full judicial process to ensure speedier processing of support establishment and enforcement actions. Under proposed paragraph (b)(2), use of a State's generally applicable full judicial process is limited to appellate review of actions taken under expedited process. Proposed paragraph (b)(3) specifies requirements for notice to the absent parent. In paragraph (b)(4), we are proposing that under expedited process orders must have the same force and effect under

State law as orders established by full judicial process. Under proposed paragraph (b)(5), the State's processes must ensure that the rights of the individuals involved are protected. And in paragraph (b)(6), we propose that a State must use expedited processes for cases from its own State and from other States.

Paragraph (c) contains proposed requirements for administrative process. Under these requirements a State must use the formula for setting support order amounts required for administrative process under 302.53 and have and use certification procedures for hearing officers. Paragraph (c)(3) requires the administrative agency to use the State's generally applicable administrative procedures and paragraph (c)(4) requires the administrative agency to provide the absent parent with a copy of the order. Paragraph (d) contains our proposals regarding quasi-judicial processes. We provide that judge surrogates must be used in a system of quasi-judicial process and that their delegated authority must include, at a minimum, the following functions: taking testimony and establishing a record; evaluating evidence and making initial decisions or recommendations; and accepting a voluntary acknowledgement of support liability and approving stipulated agreements to pay child support.

The experience of States which use some form of expedited process has shown that judge surrogates must have authority to perform at least these functions. States may expand the authority of judge surrogates to include enforcement of support obligations and issuance of default judgments or may delegate more authority to the surrogates based on their particular needs. For example, where a high percentage of absent parents fail to appear for hearings, as State might delegate the authority to issue bench warrants or default orders to judge surrogates. A State must delegate enough authority to judge surrogates to allow them to perform in a truly expedited manner. Under proposed 303.10(e), in accordance with the statute, a State would be granted an exemption from the requirements of 303.101 for a political subdivision on the basis of the political subdivision's effectiveness and timeliness of support order issuance and enforcement in the same manner that States would be granted exemptions from required procedures in accordance with 302.70(c).

State Income Tax Refund Offset

We are implementing the new section 466(a)(3) by adding a new 45 CFR 303.102 which sets out the criteria for implementing State income tax refund offset procedures. The offset process is mandatory for all appropriate IV-D cases, including AFDC, non-AFDC and foster care maintenance cases regardless of whether they are intrastate cases or interstate cases referred from other States. Section 303.102(a) specifies which overdue support qualifies for offset. Paragraph (a)(1) would clarify that overdue support in all IV-D cases qualifies for State income tax offset. Paragraph (a)(2) specifies that overdue support qualifies for offset if the State does not determine that the case is inappropriate for use of this procedure using guidelines it may develop which are generally available in the State. We have given States maximum flexibility to set which overdue support qualifies for offset to permit each State to establish the most effective and efficient procedures for offsetting State income tax refunds. We recognize that one set of criteria in Federal regulations will not be suitable for all States.

Paragraph (b)(1) would require the IV-D agency to establish procedures to ensure that amounts referred for offset have been verified and are accurate. The proposed regulations do not specify the procedures States must use to ensure accuracy, since procedures may vary from State to State. Paragraph (b)(2) would require the IV-D agency to notify the appropriate State office or agency of any significant reductions in amounts referred for offset. Under 302.102(c), A State must inform non-AFDC individuals in advance that the State may first use any offset amount to satisfy any unreimbursed AFDC or foster care maintenance payments. This is in accordance with current policy which allows States to use overdue support collected in non-AFDC cases either to satisfy reimbursed assistance or to pay non-AFDC individuals. In accordance with section 466(a)(3)(A) of the Act, proposed 303.102(d) requires States to send advance notice to the absent parent of the referral for offset and provide an opportunity to contest it. Section 303.102(e)(1) would require States to establish procedures for contesting the referral for offset. Paragraph (e)(2) would require States to establish procedures for contesting the referral for offset. Paragraph (e)(2) would require States to have a mechanism for promptly reimbursing the absent parent if the offset amount is found to be in error or to exceed the amount of overdue support. Paragraph (e)(3) would require States to establish procedures, with respect to joint refunds, for ensuring that the absent parent's spouse has an opportunity to request a share of the refund, if appropriate, in accordance with State law.

Section 303.102(f) allows a State to deduct from the amount collected in a non-AFDC IV-D case a reasonable fee to cover the cost of collecting overdue support using State tax refund offset, in accordance with section 466(a)(3)(B) of the Act. Section 303.102(g) sets forth the requirements specified in section 466(a)(3)(B) of the Act for distribution of amounts offset. Paragraph (g)(1) requires States to distribute amounts collected from State tax refund offsets in a timely manner as overdue support. This paragraph also requires the State to credit amounts offset on individual IV-D payments records. In AFDC or foster care maintenance cases, distribution procedures at 302.51(b)(4) and (5) or 302.52(b)(3), respectively, are applicable because the State tax refund offset as past-due support. Under 302.51(b)(4), amounts collected in an AFDC case are retained by the State as reimbursement for past assistance payments. Section 302.51(b)(5) provides that any excess amounts remaining after the State is reimbursed in an AFDC case shall be paid to the family. Under 302.52(b)(3), which governs distribution in foster care maintenance cases, the distribution is the same as for AFDC cases. Under 303.102(g)(2), if the amount collected is in excess of amounts required to be distributed, the excess amount must be refunded to the absent parent within a reasonable period. Section 303.102(h) requires the State IV-D agency to request that notice of the absent parent's home address and social security number or numbers be sent by the State agency responsible for processing State income tax refunds to the State IV-D agency that requested the offset and the State IV-D agency enforcing the support order. This provision is required by the new statute in section 466(a)(3)(C).

Imposition of Liens

We are implementing the new section 466(a)(4) by adding a new 45 CFR 303.103, Procedures for the imposition of liens against real and personal property. In accordance with the new statute under paragraph (a) of this section must have in effect and use procedures for the imposition of liens against the real and personal property of an absent parent who owes overdue support and who resides or owns property in the State. Under paragraph (b), this procedure is applicable for

cases not deemed inappropriate under guidelines that may be developed by the State made generally available.

Posting Security, Bonds or Guarantees

We are proposing to implement the requirements of the new section 466(a)(6) by adding a new 45 CFR 303.104, Procedures for posting security, bond or guarantee to secure payment of overdue support. In proposed 303.104(a), States must have in effect and use procedures under which absent parents must post security, bond, or give some other guarantee to secure payment of overdue support. This procedure is applicable for cases not considered inappropriate under the State's generally available guidelines. Examples of appropriate cases might be those in which the absent parent is self employed or realizes income from commissions or other irregular payments, unless the income realized is so small that it would be counter-productive to require security because the cost of meeting the security would preclude payment of the support obligation. States should screen cases for use of this procedure very carefully in order to use it to its fullest advantage. In accordance with the new statute, proposed paragraph (b) requires a State to give the absent parent advance notice, in full compliance with the State's procedural due process requirements, of the requirement to post security, bond or give some other guarantee and of the methods to use to contest the action. Under proposed paragraph (c), this procedure is applicable for cases not deemed inappropriate under guidelines that may be developed by the State and made generally available.

Making Information Available to Consumer Reporting Agencies

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

Under proposed paragraph (b), in accordance with section 466(a)(7) of the Act, States must use this procedure when an absent parent is more than \$1,000 in arrears and information regarding the amount of overdue support owed by these absent parents is requested by such agencies. The cases in which information is sent to the consumer reporting agency may be further limited by the State under generally available guidelines used to determine cases inappropriate for this procedure. The use of such procedures is optional to the State in cases where the absent parent is less than \$1,000 in arrears. Under proposed paragraph (c), in accordance with the statute, States would have the option to charge the agency a fee for providing this information. Any fee charged would be limited to the actual cost of providing the information. Under this requirement, a State may establish a uniform fee to be applied in all cases or develop a fee schedule based on the volume of requests. Paragraph (d) requires the State to provide the absent parent an advance notice and an opportunity to contest the accuracy of the information. Paragraph (e) requires the

State to comply with all applicable procedural due process requirements of the State before releasing the information. The requirements imposed in paragraph (d) and (e) are required by the statute. The requirements of this section do not preclude a State from obtaining information from consumer reporting agencies.

Distribution

We are revising 45 CFR 302.51(a) to provide a paragraph (a)(1) that the date of collection in interstate cases is the date the collection is received by the responding State, except as provided in paragraph (a)(2). Under the current 302.51(a), the date of collection is the date the initiating State receives the collection. Under paragraph (a)(2), we are proposing to make the date of collection date for amounts withheld by employers under withholding procedures the date the employer withholds the absent parent's wages to meet the support obligation. We are making these changes under the authority of section 1102 of the Act in order to distribute payments as current support in interstate cases and in cases where multiple withholding payments are submitted in a lump sum to the IV-D agency. Thus, the IV-D agency will be able to distribute these payments as intended by the statute and to avoid possible inequities resulting from delays in forwarding payments by employers or responding States in interstate cases.

Incentive Payments

Under current section 458 of the Act, States and political subdivisions that enforce and collect support are eligible to receive as an incentive 12 percent of collections made on behalf of AFDC families. States deduct the incentive payment from the Federal share of collections before reimbursing the Federal government for its contribution toward the AFDC assistance payment. The incentive payment is thus set at a fixed rate of the support collection. The fixed incentive payment rewards States for collections made in AFDC cases, but it does not encourage States to improve program efficiency and effectiveness. The great variance in the efficiency and effectiveness of Child Support Enforcement programs operated by States has become a matter of increasing concern. This disparity has led to a search for ways in which Federal funding might be used to encourage improvement in the performance of State Child Support Enforcement programs.

To encourage and reward States that operate Child Support Enforcement programs in an efficient and effective manner and to stimulate collections, Congress added a new section 454(22) and revised section 458 of the Act. Effective October 1, 1985, section 458 will replace the current incentives system with a new system under which States will receive a minimum incentive payment based on amounts collected on behalf of AFDC families and on behalf of non-AFDC families. States could also receive additional amounts above the minimum payment if their performance meets the criteria established by Congress and promulgated in this document. In addition, section 454(22) requires the State to pass through an appropriate share of its incentive payment to those political subdivisions within the State that financially participate in the program. Since the emphasis of the new system is on program performance, we believe that States will be encouraged to select and develop more effective and efficient methods of operating their programs. Section 5(c)(2)(A) of the new statute provides that through FY 1985, States will receive incentives on AFDC collections made, including the first \$50 collected which is returned

to the family in accordance with section 457(b) of the Act as amended by section 2640(b) of the Deficit Reduction Act of 1984. Prior to this provision, incentives were paid only on collections retained to reduce or repay assistance payments. Revised section 458(b)(4) provides for a transition between the current funding system (12 percent incentives and 70 percent Federal matching rate) and the new system which becomes effective October 1, 1985.

Under the transition provision, in FY 1986 and FY 1987, States will be paid an amount equal to the greater of the amount they qualify for under the new incentive and Federal matching rate system or 80 percent of the amount that they would have received under the 12 percent incentive payment (as amended by the new statute to allow incentives to be paid on amounts collected, including the \$50 which is passed through to the family under the Deficit Reduction Act of 1984 (P.L. 98-369))) and 70 percent matching rate system, had they remained in effect as they were in effect for FY 1985. We proposed to implement the new section 454(22) and the revised section 458 of the Act by adding a new 302.55 and revising 303.52, Incentive payments to States and political subdivisions. In accordance with the new State plan requirement in section 454(22), the proposed 302.55 would require the State plan to provide that, in order for the State to be eligible to receive incentive payments under 303.52, if one or more political subdivisions participate in the cost of carrying out the IV-D program, those subdivisions shall be entitled to receive an appropriate share of any incentive payment made to the State for the period, as determined by the State in accordance with 303.52(d), taking into account the efficiency and effectiveness of the political subdivision in carrying out its activities under the IV-D State plan. For example, the State may determine the appropriate share of each locality that participates in the costs of the program using a formula such as the one specified in statute and contained in this document at 303.52(b). We strongly recommend that if States use that formula, they supplement each locality's share, if necessary, so that localities receive the total incentive payment which would be computed for their performance with respect to the criteria in 303.52(d). The revised section 458 of the Act is implemented by revising the current 303.52 Paragraph(a) of the proposed 303.52 contains four definitions.

The definition of "political subdivision" is unchanged from the current 303.52. To clarify the use of the terms "AFDC collections," "non-AFDC collections" and "total IV-D administrative costs," we added definitions of these terms to the proposed 303.52(a). The definitions of AFDC and non-AFDC collections reflect the provision in section 458(b) which allows States to count collections made in foster care maintenance cases as AFDC collections for purposes of calculating incentive payments. Proposed paragraph (b) provides that OCSE will pay an incentive payment to a State for each fiscal year in recognition of AFDC collections and of non-AFDC collections. Under paragraph (b)(1), a portion of the State's incentive payment would be computed as a percentage of its AFDC collections, and a portion of its incentive payment would be computed as a percentage of its non-AFDC collections. The percentage, determined separately for AFDC and non-AFDC incentives, is based on the ratio of the State's AFDC and non-AFDC collections to the State's total IV-D administrative costs, in accordance with section 458(c) of the Act. The percent of collections payable as an incentive to a State in a given fiscal year is specified in the schedule contained in paragraph (b)(1). To implement section 458(b) of the Act, each State will receive an incentive payment of at least six percent of its AFDC and non-AFDC collections. The schedule also sets forth increased incentive payments equal to 6.5-percent of each type of collection if the ratio of AFDC or non-AFDC collections to total IV-D

administrative costs equals at least 1.4. An additional incentive of one-half of one percent of AFDC and non-AFDC collections, up to a limit of 10 percent, will be paid for each full two-tenths by which the ratio exceeds 1.4.

These two provisions governing increased incentive payments implement section 458(c) of the Act. Under 303.52(b)(2), we propose that the ratios of the State's AFDC and non-AFDC collections to total IV-D administrative costs would be truncated at one decimal place, since rounding is not permitted under the statute. For example, a State would receive an incentive of seven percent of its AFDC collections if the ratio of AFDC collections to total IV-D administrative costs was 1.79, because in order to receive an incentive of 7.5 percent, the ratio must be at least 1.8. As provided under section 458(b), paragraph (b)(3) provides that the portion of the incentive payment paid to a State for non-AFDC collections may not exceed the portion paid the State for AFDC collections in FY 1986 and 1987. However, in FY 1988, the non-AFDC portion of the incentive may equal 105 percent of the AFDC portion of the incentive; in FY 1989, the non-AFDC portion may equal 110 percent of the AFDC portion of the incentive; and in FY 1990 and thereafter, it may equal 115 percent of the AFDC portion of the State's incentive payment. Under the proposed (b)(4), we have listed conditions that apply in the calculation of incentive payments. In paragraph (b)(4)(i), we would specify that collection distributed and expenditures claimed by a State in a specified fiscal year will be those used to calculate the ratio under the proposed paragraph (b)(1). In proposed paragraph (b)(4)(ii), both the responding State and the initiating State receive credit for collections made interstate cases. This provision, which implements section 458(d), is designed to encourage State to work interstate cases. It also represents a significant change from current law under which only the responding State receives the incentive payment. In paragraph (b)(4)(iii), we would exclude fees paid by individuals, recovered costs and program income such as interest earned on collections from IV-D expenditures when computing incentives. Excluding these amounts from IV-D expenditures is provided for in section 455(a) of the Act. Section 455(a) requires the Secretary, in determining the total amount expended by a State during a quarter, to exclude the total amount of any fees collected or other income resulting from services provided for both AFDC and non-AFDC cases under the title IV-D State plan. As provided for in section 458(c), proposed paragraph(b)(4)(iv) allows States to exclude laboratory cost incurred in determining paternity from their total IV-D administrative costs when computing incentives.

Congress provided this option in an effort to encourage States to pursue paternity cases which may not be cost-effective initially but which may pay off over a longer period of time and which also benefit the child. Lastly, under the proposed paragraph (b)(4), States must add amounts expended by the State in carrying out specific interstate projects which are provided for under section 455 (e) of the Act to their IV-D administrative expenditures when computing incentives. This is in accordance with section 455(e)(4) of the Act. Under the proposed 303.52(c)(1), we would estimate the amount of the incentive payment to be received by a State for the upcoming year, in accordance with section 458(e) which requires the Secretary to estimate the incentive payment due a State based on the best information available. In order to obtain this information, however, the reports currently submitted by the State must be revised. A revision is currently in process and will be submitted separately to the Office of Management and budget (OMB) for review in accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511). In paragraph (c)(2), we are proposing that States include one-quarter of the estimate annual incentive payment

amount in their quarterly collection report which will result in a reduction to the Federal share of AFDC collections reported for that quarter. We are making this proposal because section 458(e) of the Act provides that estimated incentive be paid quarterly and because this practice is being used currently by States to obtain the 12 percent fixed incentive. Adjustments for any overpayments or underpayments which might have been made in prior quarters would be made in the following fiscal year. Thus, States will know in advance an estimate of the incentive payment they can expect to receive for a year which will allow them to budget for their title IV-D programs with some degree of certainty. The proposed paragraph (c)(3) provides that OCSE would calculate the State's actual incentive payment for the fiscal year after the end of the current fiscal year based on State performance data. If adjustments to the estimate made at the beginning of the fiscal year are necessary, the State's IV-A grant award would be reduced or increased to ensure that the State receives the appropriate incentive payment. Proposed paragraphs (c)(4) and (5) contain the special conditions relating to the payment of incentives during FY 1985, FY 1986, and FY 1987 which are specified in section 458(b)(4) of the Act and section 5(c)(2)(A) of the Child Support Enforcement Amendments of 1984, and described earlier in this preamble. In accordance with section 454 (22) of the Act, proposed 303.52(d) would require States to calculate and promptly pay incentive payments to political subdivisions that participate in the costs of the IV-D program.

Under the proposed paragraph (d)(1), we would require the State to develop a standard methodology for passing through an appropriate share of its incentive payment to political subdivisions that participate in the costs of the IV-D program, taking into account the efficiency and effectiveness of the activities carried out under the State plan by the political subdivisions. Since many localities perform a substantial amount of work in the enforcement and collection of support, Congress specified in section 454(22) that they must receive an appropriate share of the State's incentive payment, if they participate in program costs. Therefore, under proposed paragraph (d)(1) States must develop a standard methodology best fits their needs. The proposed paragraph (d)(2) would require the State to seek local participation in the development of its standard methodology. We are proposing this requirement because we believe that local participation will ensure that the methodology is fair and equitable. To comply with this requirement, States may use whatever rulemaking process that includes an opportunity for review and comment that is available under State law or submit a draft methodology to participation localities for review and comment. Lastly, in 303.52(e) we propose to require that States continue to use the time frame for the transmission of interstate collections and the codes required under the current 303.52. Therefore, responding jurisdictions would be required to forward collections to the initiating State within 10 days and include the code identifying the collecting State or political subdivision as defined by the Federal Information Processing Standards Publication or in the Worldwide Geographical Location Codes.

Reduction in the Federal Matching Rate

Federal funding is available to States for administrative costs incurred pursuant to a State plan for child support enforcement approved under title IV-D of the Act. This funding is authorized by section 455(a)(1) of the Act. Revision 455(a)(1) reduces the Federal funding rate from 70 to 66 percent over a three-year period beginning in FY 1988. Federal funding at the 70 percent rate would be available for FY 1983 through FY 1987. The rate of 68 percent applies to FY 1988 and

FY 1989. Each fiscal year thereafter the matching rate will be 66 percent. We are implementing this change by defining the term "applicable matching rate" in 45 CFR Part 301 and substituting that phrase for the phrase "70 percent rate" wherever it appears in 45 CFR Parts 304 and 307. Also, we are making a conforming change to 305.22, State financial participation; to specify that the State share in funding the administrative costs of the program will increase from 30 to 34 percent over the same period. Collection of Past-Due Support From Federal Income Tax Refunds Revised section 464 of the Act provides for the use of Federal income tax refund offsets to collect past-due support owed in non-AFDC and foster care cases, as well as AFDC cases. Previously, this means of collection was available for AFDC cases only. The statutory amendments apply with respect to refunds payable under section 6402 of the Internal Revenue Code of 1954 after December 31, 1985 and before January 1, 1991. The proposed regulations would implement revised sections 454 and 464 of the Act by amending 303.72, the current regulation governing the use of Federal income tax refund offset.

The proposed regulations do not amend 302.60, the State plan requirement section, because 302.60 is written broadly enough to cover submittal of AFDC, foster care maintenance and non-AFDC cases for refund offset. Current 303.72(a) defines "past-due support." We have moved the definition to 301.1 because it applies to all sections in the regulations governing Federal tax refund offset. We also added a sentence to the definition which, in non-AFDC cases, limits past-due support which may be referred for Federal income tax refund offset to support due a minor child. Spousal support due in non-AFDC cases may not be referred for Federal refund offset. Section 303.72(b) contains the criteria for determining which past-due support qualifies for Federal tax refund offset. Current 303.72(b)(1) states, in part, that past-due support qualifies for offset if the support has been assigned to the State making the referral. The proposed regulations would implement revised section 464(a) of the Act by redesignating that portion of 303.72(b)(1) as 303.72(a)(1) and revising it to permit States to refer amounts for offset if there has been an assignment under 232.11 or section 471(a)(17) of the Act or an application for IV-D services under 302.33 filed with the State IV-D Agency. The remainder of current 303.72(b)(1) which requires States to make reasonable efforts to collect the amount of an obligation using methods available under State law is moved to a new paragraph (a)(2) under the proposed regulations. This paragraph could be revised to provide that the IV-D agency, the client, or the client's representative must have made reasonable efforts to collect the amount of the obligation, using methods available under State law, as appropriate. This is necessary to prevent the IRS from becoming the collector of first resort. The proposed regulations at 303.72(a)(3) require the amount referred for offset in AFDC and foster care maintenance cases to be at least \$150 as specified in current regulations for AFDC cases.

The proposed regulations redesignate current 303.72(b)(3) through (5) as 303.72(a) (3)(ii), (5) and (6). These paragraphs require any past-due support referred for offset in AFDC and foster care maintenance cases to have been delinquent for three months or longer, require the State to verify the accuracy of the name, social security number and arrearage amount in all cases and provide that the IRS must have received notification of liability for past-due support in all cases. Proposed 303.72(a)(4) requires, in non-AFDC cases: that the support is due to or on behalf of a minor; that the State refers the past-due support for offset has a support order; that the amount of past-due support is at least \$500; at State option, that the amount has accrued since the State IV-D agency began to enforce the support order; and the State has checked its records to

determine if an AFDC or foster care maintenance assigned arrearage exists with respect to the non-AFDC individual or family. Section 464(c) limits the amount referred for offset in non-AFDC cases to support due to or on behalf of a minor. Spousal support owed in non-AFDC cases may not be referred for Federal income tax refund offset. Section 464(b)(2) of the Act imposes the \$500 minimum amount to be referred for offset in non-AFDC cases and allows States to limit amounts referred to those accrued since the State began to enforce the order. We have proposed the requirement that there be a support order in the State that refers the past-due support for offset in a non-AFDC case, using the Secretary's authority under section 1102 of the Act, to ensure, to the extent possible, that amounts referred for offset are accurate and that disputes can be resolved. In many non-AFDC cases, direct payments will have been made to the family and there may be equitable defenses asserted (e.g., denial of visitation, acquiescence, payments in kind) that would not be available in an AFDC case. Since a State which has a support order will have personal jurisdiction over the absent parent, and will be accustomed to dealing with these various defenses, that State is in the best position to resolve any problems concerning the collection of past-due support.

We are interested in receiving comments on this requirement and, in particular would like to know whether States and other interested parties find it unnecessarily restrictive for non-AFDC cases or would prefer to extend the requirement to AFDC cases as well. We have also used the Secretary's authority section 1102 of the Act to require States to check their records for assigned AFDC or foster care maintenance arrearages in non-AFDC cases. It is possible that a non-AFDC individual who has applied for IV-D services and is seeking Federal tax refund offset to satisfy past-due support may provide, locate or other information which the State previously lacked and therefore was unable to collect assigned arrearages which accrued when the non-AFDC individual was receiving AFDC or foster care maintenance payments.

Current 303.72(c) sets forth requirements for notification to OCSE of liability for past-due support. Paragraph (c)(1), which requires IV-D agencies to submit to OCSE, by October 1 of each year, a notification on magnetic tape of liability for past-due support, is redesignated as paragraph (b)(1) and would be revised by substituting the October 1 submittal data with the date specified by OCSE in instructions. Paragraph (c)(2), redesignated as paragraph (b)(2), would be revised by adding a paragraph (b)(2)(v) to require the notification of liability for past-due support to indicate for each delinquency whether the past-due support is due a non-AFDC individual who applies for services under 302.33. Therefore, the State must certify for offset separately amounts to satisfy assigned AFDC and foster care arrearages and other arrearages due in non-AFDC case. Paragraph (b)(3) contains the current provision in paragraph (c)(3) concerning additional information a State may include in the notification of liability for past-due support. Current 303.72(d), governing review of requests for offset is redesignated as 303.72(c) and paragraph (d)(2), redesignated as paragraph (d)(2), redesignated as paragraph (c)(2), would be revised by deleting "December 1," Current 303.72(e), governing notification of changes in case status, is redesignated as 303.72(d) and minority editorial changes would be made for consistency. Current 303.72(f) redesignated as 303.72(e), requires OCSE or the State IV-D agency to send a pre-offset notice. Section 464(a)(3) of the Act specifies that the notice must include a statement informing the absent parent of the steps which may be taken to contest the State's determination that past-due support is owed or the amount of past-due support and the procedures to be followed in the case of a joint return to protect the share of the refund which is payable to another person.

Section 303.72(e) implements the requirement for advance notice to the absent parent, including the procedures and deadlines for responding to the notice. These requirements provide the absent parent with an opportunity to be heard if he or she does not agree that past-due support is owed or that the amount being referred for offset is accurate. In addition, 303.72(e)(1) would require the State or OCSE to include a statement in the notice that, in the case of a joint return, the IRS will contact the absent parent's spouse at the time of offset regarding the steps to take to protect the share of the refund which may be payable to that spouse.

Section 464(a)(1) and (2) of the Act specify that the IRS will notify the taxpayer that the withholding has been made. The IRS will also notify any individual who filed a joint return with the absent parent of the steps to take in order to secure his or her proper share of the refund. Determination of the proper share of a refund depends on the community property laws of the jurisdiction where the absent parent and spouse reside. Proposed 303.72(e)(2) sets forth IRS procedures with respect to notice at the time of offset. The proposed regulations revise paragraph (g)(1) (redesignated as paragraph (f)(1) (redesignated as paragraph (f)(1))) to require States to take steps to investigate any complaint concerning a tax refund which may be or has already been offset. The time frames for contesting the action must be specified in the notice required in 303.72(e)(1). This paragraph currently requires only that the IV-D agency investigate any complaint from an absent parent concerning a tax refund which has been offset. We proposed the revision because the State IV-D agency is required to notify the absent parent in the pre-offset notice of the right to contest the State's determination that past-due support. Since the IV-D agency will be responsible for accurately submitting amounts to be collected by refund offset, it is important for the State to give the absent parent an opportunity to furnish as much information as possible to avoid making incorrect submittals. If there is an opportunity to contest the offset action within a specified time, any errors can be corrected before amounts are paid to the family. Accuracy is essential for States in the Federal, as well as State, income tax refund offset process. OMB Circular A-87 (Cost Principles for State and Local).