

Revised Instructions for Requesting an Exemption from the Mandatory Laws and Procedures in Section 466 of the Social Security Act

I. INTRODUCTION

Since the inception of the Federal Child Support Enforcement program, certain laws and procedures have noticeably increased the efficiency and effectiveness of some States' programs. To improve the nationwide child support effort, Congress required States to implement the particular laws and procedures that were responsible for the success of those State programs. Section 466 of the Act currently lists twenty-one categories of required State laws:

- (1) Income withholding;
- (2) Expedited processes including administrative actions by the State agency, substantive and procedural rules, and coordination with ERISA;
- (3) State income tax refund offset;
- (4) Liens against real and personal property; full faith and credit to such liens;
- (5) Procedures concerning paternity establishment;
- (6) Posting of security, bonds, or other guarantee to secure payment of overdue support;
- (7) Reporting arrearages to credit bureaus;
- (8) Providing for income withholding in orders;
- (9) Requiring that any payment or installment of support is a final judgment by operation of law;
- (10) Review and adjustment of child support orders upon request;
- (11) Giving of full faith and credit to a determination of paternity made by any other State, whether established by voluntary acknowledgment or administrative or judicial processes;
- (12) Locator information from interstate networks;
- (13) Recording of Social Security Numbers in certain family matters;
- (14) Administrative enforcement in interstate cases;
- (15) Procedures to ensure that persons owing overdue support either work or have a plan for payment of such support;

- (16) Authority to withhold or suspend licenses;
- (17) Financial institution data matches;
- (18) Enforcement of orders against paternal or maternal grandparents;
- (19) Health care coverage;
- (20) Uniform Interstate Family Support Act; and
- (21) Laws voiding fraudulent transfer.

If a State can demonstrate to the satisfaction of the Secretary that any one, or all, of the required laws and procedures will not increase the effectiveness and efficiency of the State's Child Support Enforcement (CSE) program, the Secretary may grant the State an exemption from implementing one or more of the required procedures. Additionally, an exemption is available if a State has and uses a similar procedure which does not fully comply with the mandate, law, or procedure and the State shows evidence that implementation of the mandatory procedure would not increase the efficiency and effectiveness of the State's existing procedure. With respect to procedures for expedited processes, a State may apply for an exemption for one or more political subdivisions of the State.

This Action Transmittal addresses requests for exemptions from the requirements of section 466 of the Act only. Please read this material carefully before preparing any requests for exemptions.

II. EXEMPTION PROCESS AND MATERIAL FOR SUBMISSION

A. Process

States must submit an original and one copy of each exemption request to the OCSE Regional Program Manager. The OCSE Regional Program Manager will review the State's submission and will recommend to the Central Office approval or disapproval of the State's exemption request.

If OCSE believes additional information is needed, the Regional Office will request it from the State in writing. The State must provide the additional material within two weeks from the date of the Regional Office's letter requesting the additional material. If the State's submission remains incomplete or insufficient to address the questions raised by the request for additional information, a decision will be made based upon the material submitted.

The OCSE Commissioner will notify States in writing that exemptions have been approved or disapproved and the basis for the decision. If an exemption is approved, OCSE's approval letter will specify whether the exemption period will be unlimited or

granted for a period of up to three years. Disapprovals of requests for exemptions are not subject to administrative appeal.

All exemptions are subject to review at any time during the exemption period. If circumstances change, an exemption may be terminated by the OCSE Commissioner. (Section IV contains information pertaining to disapproval or revocation of an exemption.)

States must apply for an extension of any time limited exemption, or enact and implement the necessary laws and procedures, prior to expiration of the exemption period. If the State applies for an extension, it must submit an original and one copy of each exemption request 90 days before the current exemption period expires. The State's submission for an extension must meet the applicable information requirements set forth in Section III.

B. Material for Submission of Requests for Exemptions and Requests for Extension of Previously Approved Exemptions

1. Cover letter. The State's cover letter must specify the mandatory procedure(s) from which the State is requesting an exemption.

2. Justification and Documentation. A State must submit the justification and documentation addressed under Section III, as appropriate, for each exemption request and for each request for an extension of a previously approved exemption.

III. EXEMPTION CATEGORIES

An exemption authorizes a State not to implement a mandatory procedure or to operate a procedure which does not comply with all of the requirements in the statute and regulations but contributes to an effective and efficient CSE program. There are three categories of exemptions: authority, not to implement a procedure, and similar procedure. A State must meet different criteria depending upon the type of request.

A. Authority Exemption

There are two types of "authority exemptions" which relieve a State from the requirement to enact a law in connection with a mandatory procedure.

1) The State already has an existing law or other legal authority for procedures under which it is operating in compliance with the intent of the Federal mandatory procedure even though the State does not have a statute specifically addressing the matter. – A State may request an exemption by submitting copies of the existing law or legal authority and explaining why the procedures under its law or legal authority indicate that the State is in compliance with the Federal mandatory requirement. For example, the Montana Supreme Court has ruled that there is no right to a jury trial for equity matters. This decision has been interpreted as covering paternity establishment proceedings; thus, there

have been no jury trials for paternity establishment in Montana and Montana received a corresponding State plan exemption on this basis.

2) A categorical exemption request regarding a mandatory requirement for which OCSE has determined it is appropriate to grant any State a State plan exemption if the State meets requirements in guidance issued by OCSE. There are currently two areas where categorical authority exemptions have been issued:

a. The State does not have authority to have a State income tax. – A State may request an authority exemption from State income tax refund offset requirements by submitting an attestation from the appropriate State official that the State does not have a State income tax.

b. The State has enacted the Uniform Interstate Family Support Act 2001. – A State which intends to update or has updated its UIFSA with the 2001 amendments must submit a letter of request to the OCSE Regional Program Manager that meets the requirements of AT-02-02.

States do not need to apply for extensions of existing authority exemptions.

B. Exemption Not to Implement a Procedure

A State may apply for an exemption from implementing any of the required procedures in section 466(a) of the Act. The State must meet the two criteria below:

1. The State must provide a description of its existing method of operation or existing procedures that make the mandatory procedure unnecessary.

2. The State must submit evidence that implementation of a particular procedure would not increase the efficiency and effectiveness of the State's Child Support Enforcement Program.

To meet this criterion, a State must show why implementation of the particular mandated procedure would not be cost effective (estimated increase or decrease in estimated collections or performance resulting from the procedure is less than estimated costs) over a three year period. Data must be provided to show estimated collections from and costs of the procedure over a three year period, where appropriate.

The evidence must include an estimate of:

- the developmental costs specific to implementation of the procedure;
- the operating costs specific to implementation of the procedure compared to any increase or decrease in performance as a result of implementing the procedure;
- and

- the change in staffing levels which would be needed to operate the procedure.

In addition, the State must compare the effectiveness of its current program to the effectiveness of the program were it to implement the procedure, by responding to the following questions, as appropriate. Would the required procedure:

- increase or decrease the average length of time to take an action in a case? Explain why and how.
- increase or decrease the number of support orders enforced? Explain why and how.
- increase or decrease the amount of collections? Explain why and how.

A State applying for an extension of an exemption not to implement a procedure must provide information on any changes in the State's operations or in the tools or procedures or techniques available to the State that could alter the need or justification for the exemption or could change the level of performance or collections or length of time for taking actions since its exemption request was previously granted.

Statistical Requirements

A State must fully document the request and define the methodology(ies) used to reach its conclusions. The methodology(ies) must be conceptually sound and supported by data that are reliable and representative. Where estimates are used, the State must identify any assumptions made and/or the sampling approach(es) used.

C. Exemption to Operate a Similar Procedure

This includes situations in which a State has already implemented a required law but wishes to change its law/procedures to operate an alternate procedure which will be as or more efficient and effective than the required procedure (e.g., in which using the last four digits of a Social Security Number would be as efficient and effective as using the full Social Security Number.) If a State applies for an exemption to operate a similar procedure, it must meet the two criteria below.

1. The State must provide a description of the similar procedure, including identification of those parts that conform to the statutory and regulatory requirements and those that do not conform.

To meet this criterion, a State must describe its system. The description should address procedures used for the handling and processing of cases. The State must also identify those aspects of the similar procedure that do not conform to the statutory and regulatory requirements.

2. The State must submit evidence that implementation of the mandatory procedure would not increase the efficiency and effectiveness of the State's procedure or, if the State wishes to change to an alternate procedure, evidence that the alternate procedure will not decrease the efficiency and effectiveness of the State's program or that it will be at least as efficient and effective as the required procedure.

To meet this criterion, the State's evidence must include an estimate of:

- the developmental costs of implementing the additional or alternate statutory or regulatory requirements;
- the operating costs compared to any increase or decrease in collections or performance as a result of the additional or alternate statutory or regulatory requirements; and
- the change in staffing levels which would be needed to operate the additional or alternate statutory or regulatory requirements.

In addition, the State must compare the effectiveness of its current program to the effectiveness of the program were it to implement the additional or alternate statutory or regulatory provisions, by responding to the following questions, as appropriate. Would the required provision or, in the case of a State wishing to change from a required procedure to an alternate procedure, would the alternate procedure:

- increase or decrease the average length of time to take an action in a case? Explain why and how.
- increase or decrease the number of support orders enforced? Explain why and how.
- increase or decrease the amount of collections? Explain why and how.

A State applying for an extension of an exemption to operate a similar procedure must provide information on any changes in the State's operations or in the tools or procedures or techniques available to the State that could alter the need or justification for the exemption or could change the level of performance or collections or length of time for taking actions since its exemption request was previously granted.

Statistical Requirements

A State must fully document the request and define the methodology(ies) used to reach its conclusions. The methodology(ies) must be conceptually sound and supported by data that are reliable and representative. Where estimates are used, the State must identify any assumptions made and/or the sampling approach(es) used.

IV. REVOCATION OF EXEMPTION OR DISAPPROVAL OF REQUEST FOR EXTENSION

As stated previously, exemptions are subject to review at any time. If circumstances change, an exemption may be revoked by the OCSE Commissioner. The regulations at 45 CFR 302.70(d) state that if an exemption is revoked, or an extension of an exemption is not granted, the State must enact the appropriate laws and implement the mandatory practice by the beginning of the fourth month after the end of the first regular, special, budget or other session of the State's legislature which ends after the date the exemption is revoked or the extension is denied. If no State law is necessary, the State must establish and be using the procedure by the beginning of the fourth month after the date the exemption is revoked or the extension is denied.

V. CERTIFICATION OF IMPLEMENTATION OF MANDATORY PROCEDURES

To ensure that States fully implement each mandatory procedure required under sections 454(20) and 466 of the Act and 45 CFR 302.70, States must submit for approval copies of all required laws, written policies and procedures, and administrative regulations or court rules as attachments to their IV-D State plan page for each mandated procedure.

The OCSE Regional Program Manager will review each submittal to ensure that all requirements are met. An approval of a State plan preprint page by the OCSE Regional Program Manager indicates that the State has fully implemented a procedure or has an exemption consistent with Section III of this Action Transmittal.