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been collected in full by both the submitting State and the State with the order.

(h) *Distribution of collections.* (1) Collections received by the IV-D agency as a result of refund offset to satisfy title IV-A or non-IV-A past-due support shall be distributed as past-due support as required in accordance with section 457 of the Act.

(2) Collections received by the IV-D agency in foster care maintenance cases shall be distributed as past-due support under §302.52(b) (3) and (4) of this chapter.

(3) The IV-D agency must inform individuals receiving services under §302.33 of this chapter in advance that amounts offset will be applied to the Secretary of the U.S. Treasury to satisfy any past-due support which has been assigned to the State and submitted for Federal tax refund offset.

(4) If the amount collected is in excess of the amounts required to be distributed under section 457 of the Act, the IV-D agency must repay the excess to the noncustodial parent whose refund was offset or to the parties filing a joint return within a reasonable period in accordance with State law.

(5) In cases where the Secretary of the Treasury, through OCSE, notifies the State that an offset is being made to satisfy non-IV-A past-due support from a refund based on a joint return, the State may delay distribution until notified that the unobligated spouse's proper share of the refund has been paid or for a period not to exceed six months from notification of offset, whichever is earlier.

(6) Collections from offset may be applied only against the past-due support which was specified in the advance notice described in paragraph (e)(1) of this section.

(i) *Payment of fee.* (1) A refund offset fee, in such amount as the Secretary of the Treasury and the Secretary of Health and Human Services have agreed to be sufficient to reimburse the Department of Treasury for the full cost of the offset procedure, shall be deducted from the offset amount and credited to the Department of Treasury appropriations which bore all or part of the costs involved in making the collection. The full amount offset must be

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credited against the obligor's payment record. The fee which the Secretary of the Treasury may impose with respect to non-IV-A submittals shall not exceed \$25 per submittal.

(2) The State IV-D agency may charge an individual who is receiving services under §302.33(a)(1) (i) or (iii) of this chapter a fee not to exceed \$25 for submitting past-due support for Federal tax refund offset. The State must inform the individual in advance of the amount of any fee charged.

(3) Any State which requests the Office to send the advance written notice under paragraph (e)(1) of this section will be charged a fee, in an amount established by the Office in instructions, for printing and mailing of pre-offset notices. This fee shall be credited to the Health and Human Services appropriations which bore all or part of the costs involved in making the collection.

(j) Each State involved in a referral of past-due support for offset must comply with instructions issued by the Office.

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[50 FR 19651, May 9, 1985; 50 FR 31719, Aug. 6, 1985, as amended at 51 FR 37731, Oct. 24, 1986; 53 FR 47710, Nov. 25, 1988; 54 FR 32312, Aug. 4, 1989; 56 FR 8005, Feb. 26, 1991; 58 FR 41437, Aug. 4, 1993; 64 FR 6251, Feb. 9, 1999]

### § 303.73 Applications to use the courts of the United States to enforce court orders.

The IV-D agency may apply to the Secretary for permission to use a United States district court to enforce a support order of a court of competent jurisdiction against an noncustodial parent who is present in another State if the IV-D agency can furnish evidence in accordance with instructions issued by the office.

[61 FR 67241, Dec. 20, 1996]

### § 303.100 Procedures for income withholding.

(a) *General withholding requirements.* (1) The State must ensure that in the case of each noncustodial parent against whom a support order is or has been issued or modified in the State, and is being enforced under the State plan, so much of his or her income as

defined in sections 466(b)(1) and (8) of the Act must be withheld, in accordance with this section, as is necessary to comply with the order.

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

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

(4) In the case of a support order being enforced under the State plan, the withholding must occur without the need for any amendment to the support order involved or any other action by the court or entity that issued it other than that required or permitted under this section.

(5) If there is more than one notice for withholding against a single noncustodial parent, the State must allocate amounts available for withholding giving priority to current support up to the limits imposed under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. 1673(b)). The State must establish procedures for allocation of support among families, but in no case shall the allocation result in a withholding for one of the support obligations not being implemented.

(6) The withholding must be carried out in full compliance with all procedural due process requirements of the State.

(7) The State must have procedures for promptly terminating withholding:

(i) In all cases, when there is no longer a current order for support and all arrearages have been satisfied; or,

(ii) At State option, when the noncustodial parent requests termination and withholding has not been terminated previously and subsequently initiated, and the noncustodial parent meets the conditions for an alternative arrangement set forth under paragraph (b)(3) of this section.

(8) The State must have procedures for promptly refunding to noncustodial parents amounts which have been improperly withheld.

(9) Support orders issued or modified in IV-D cases must include a provision requiring the noncustodial parent to keep the IV-D agency informed of the name and address of his or her current employer, whether the noncustodial parent has access to health insurance coverage at reasonable cost and, if so, the health insurance policy information.

(b) *Immediate withholding on IV-D cases.* (1) In the case of a support order being enforced under this part that is issued or modified on or after November 1, 1990, the income of a noncustodial parent shall be subject to withholding, regardless of whether support payments by such parent are in arrears, on the effective date of the order, except that such income shall not be subject to withholding under this paragraph in any case where:

(i) Either the absent or custodial parent demonstrates, and the court or administrative authority finds, that there is good cause not to require immediate withholding; or (ii) A written agreement is reached between the absent and custodial parent, and, at State option, the State in IV-D cases in which there is an assignment of support rights to the State, which provides for an alternative arrangement.

(2) For the purposes of this paragraph, any finding that there is good cause not to require immediate withholding must be based on at least:

(i) A written determination that, and explanation by the court or administrative authority of why, implementing immediate income withholding would not be in the best interests of the child; and

(ii) Proof of timely payment of previously ordered support in cases involving the modification of support orders.

(3) For purposes of this paragraph, "written agreement" means a written alternative arrangement signed by both the custodial and noncustodial parent, and, at State option, by the State in IV-D cases in which there is an assignment of support rights to the State, and reviewed and entered in the record by the court or administrative authority.

(c) *Initiated withholding in IV-D cases.* In the case of income not subject to

immediate withholding under paragraph (b) of this section, including cases subject to a finding of good cause or to a written agreement:

(1) The income of the noncustodial parent shall become subject to the withholding on the date on which the payments which the noncustodial parent has failed to make under a support order are at least equal to the support payable for one month or, if earlier, and without regard to whether there is an arrearage, the earliest of:

(i) The date on which the noncustodial parent requests that withholding begin;

(ii) The date on which the custodial parent requests that withholding begin, if the State determines, in accordance with such procedures and standards as it may establish, that the request should be approved; or

(iii) Such earlier date as State law or procedure may provide.

(2) The only basis for contesting a withholding under this paragraph is a mistake of fact, which for purposes of this paragraph means an error in the amount of current or overdue support or in the identity of the alleged noncustodial parent.

(d) *Notice to the noncustodial parent in cases of initiated withholding.* The State must send a notice to the noncustodial parent regarding the initiated withholding. The notice must inform the noncustodial parent:

(1) That the withholding has commenced;

(2) Of the amount of overdue support that is owed, if any, and the amount of wages that will be withheld;

(3) That the provision for withholding applies to any current or subsequent employer or period of employment;

(4) Of the procedures available for contesting the withholding and that the only basis for contesting the withholding is a mistake of fact;

(5) Of the information provided to the employer, pursuant to paragraph (e) of this section.

(e) *Notice to the employer for immediate and initiated withholding.* (1) To initiate withholding, the State must send the noncustodial parent's employer a notice using the standard Federal format which includes the following:

(i) The amount to be withheld from the noncustodial parent's wages, and a statement that the amount actually withheld for support and other purposes, including the fee specified under paragraph (e)(1)(iii) of this section, may not be in excess of the maximum amounts permitted under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. 1673(b));

(ii) That the employer must send the amount to the SDU within 7 business days of the date the noncustodial parent is paid, and must report to the SDU the date on which the amount was withheld from the noncustodial parent's income;

(iii) That, in addition to the amount withheld for support, the employer may deduct a fee established by the State for administrative costs incurred for each withholding, if the State permits a fee to be deducted;

(iv) That the withholding is binding upon the employer until further notice by the State;

(v) That the employer is subject to a fine to be determined under State law for discharging a noncustodial parent from employment, refusing to employ, or taking disciplinary action against any noncustodial parent because of the withholding;

(vi) That, if the employer fails to withhold income in accordance with the provisions of the notice, the employer is liable for the accumulated amount the employer should have withheld from the noncustodial parent's income;

(vii) That the withholding under this section shall have priority over any other legal process under State law against the same income;

(viii) That the employer may combine withheld amounts from noncustodial parents' income in a single payment to each appropriate agency requesting withholding and separately identify the portion of the single payment which is attributable to each individual noncustodial parent;

(ix) That the employer must withhold from the noncustodial parent's income the amount specified in the notice and pay such amount to the State disbursement unit within 7 business days after the date the income would

have been paid to the noncustodial parent.

(x) That the employer must notify the State promptly when the noncustodial parent terminates employment and provide the noncustodial parent's last known address and the name and address of the noncustodial parent's new employer, if known.

(2) In the case of an immediate wage withholding under paragraph (b) of this section, the State must issue the notice to the employer specified in paragraph (e)(1) of this section within 15 calendar days of the date the support order is received if the employer's address is known on that date, or, if the address is unknown on that date, within 15 calendar days of locating the employer's address.

(3) In the case of initiated withholding, the State must send the notice to the employer required under paragraph (e)(1) of this section within 15 calendar days of the date specified in paragraph (c)(1) of this section if the employer's address is known on that date, or, within 15 calendar days of locating the employer's address.

(4) If the noncustodial parent changes employment within the State when a withholding is in effect, the State must notify the noncustodial parent's new employer, in accordance with the requirements of paragraph (f)(1) of this section, that the withholding is binding on the new employer.

(f) *Interstate withholding.*

(1) The State law must require employers to comply with a withholding notice issued by any State.

(2) When an out-of-State IV-D agency requests direct withholding, the employer must be required to withhold funds as directed in the notice but to apply the income withholding laws of the noncustodial parent's principal place of employment to determine:

(i) The employer's fee for processing the withholding notice;

(ii) The maximum amount that may be withheld from the noncustodial parent's income;

(iii) The time periods to implement the withholding notice and to remit the withheld income;

(iv) The priorities for withholding and allocating income withheld for multiple child support obligees; and

(v) Any withholding term or conditions not specified in the withholding order.

(3) In other than direct withholding actions:

(i) A State may require registration for orders from other States for purposes of enforcement through withholding only if registration is for the sole purpose of obtaining jurisdiction for enforcement of the order; does not confer jurisdiction on the court or agency for any other purpose (such as modification of the underlying or original support order or resolution of custody or visitation disputes); and does not delay implementation of withholding beyond the timeframes established in paragraphs (e)(2) and (e)(3) of this section.

(ii) Within 20 calendar days of a determination that withholding is required in a particular case, and, if appropriate, receipt of any information necessary to carry out withholding, the initiating State must notify the IV-D agency of the State in which the noncustodial parent is employed to implement interstate withholding. The notice must contain all information necessary to carry out the withholding, including the amount requested to be withheld, a copy of the support order and a statement of arrearages, if appropriate. If necessary, the State where the support order is entered must provide the information necessary to carry out the withholding within 30 calendar days of receipt of a request for information by the initiating State.

(iii) The State in which the noncustodial parent is employed must implement withholding in accordance with this section upon receipt of the notice from the initiating State required in paragraph (f)(3)(ii) of this section.

(iv) The State in which the noncustodial parent is employed must notify the State in which the custodial parent is receiving services when the noncustodial parent is no longer employed in the State and provide the name and address of the noncustodial parent and new employer, if known.

(g) *Provision for withholding in all child support orders.* Child support orders issued or modified in the State whether or not being enforced under

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the State IV-D plan must have a provision for withholding of wages. This requirement does not alter the requirement governing all IV-D cases in paragraph (a)(4) of this section that enforcement under the State plan must proceed without the need for a withholding provision in the order.

[57 FR 30682, July 10, 1992, as amended at 64 FR 6251, 6252, Feb. 9, 1999]

#### § 303.101 Expedited processes.

(a) *Definition Expedited processes* means administrative and judicial procedures (including IV-D agency procedures) required under section 466(a)(2) and (c) of the Act;

(b) *Basic requirement.* (1) The State must have in effect and use, in interstate and intrastate cases, expedited processes as specified under this section to establish paternity and to establish, modify, and enforce support orders.

(2) Under expedited processes:

(i) In IV-D cases needing support order establishment, regardless of whether paternity has been established, action to establish support orders must be completed from the date of service of process to the time of disposition within the following timeframes: (A) 75 percent in 6 months; and (B) 90 percent in 12 months.

(ii) In IV-D cases where a support order has been established, actions to enforce the support order must be taken within the timeframes specified in §§ 303.6(c)(2) and 303.100;

(iii) For purposes of the timeframe at § 303.101(b)(2)(i), in cases where the IV-D agency uses long-arm jurisdiction and disposition occurs within 12 months of service of process on the alleged father or noncustodial parent, the case may be counted as a success within the 6 month tier of the timeframe, regardless of when disposition occurs in the 12 month period following service of process.

(iv) Disposition, as used in paragraphs (b)(2)(i) and (iii) of this section, means the date on which a support order is officially established and/or recorded or the action is dismissed.

(c) *Safeguards.* Under expedited processes:

(1) Paternities and orders established by means other than full judicial proc-

ess must have the same force and effect under State law as paternities and orders established by full judicial process within the State;

(2) The due process rights of the parties involved must be protected;

(3) The parties must be provided a copy of the voluntary acknowledgment of paternity, paternity determination, and/or support order;

(4) Action taken may be reviewed under the State's generally applicable administrative or judicial procedures.

(d) *Functions.* The functions performed by presiding officers under expedited processes must include at minimum:

(1) Taking testimony and establishing a record;

(2) Evaluating evidence and making recommendations or decisions to establish paternity and to establish and enforce orders;

(3) Accepting voluntary acknowledgment of paternity or support liability and stipulated agreements setting the amount of support to be paid;

(4) Entering default orders upon a showing that process has been served on the defendant in accordance with State law, that the defendant failed to respond to service in accordance with State procedures, and any additional showing required by State law; and

(5) Ordering genetic tests in contested paternity cases in accordance with § 303.5(d)(1).

(e) *Exemption for political subdivisions.* A State may request an exemption from any of the requirements of this section for a political subdivision on the basis of the effectiveness and timeliness of paternity establishment, support order issuance or enforcement within the political subdivision in accordance with the provisions of § 302.70(d) of this chapter.

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[50 FR 19655, May 9, 1985, as amended at 50 FR 23958, June 7, 1985; 59 FR 66251, Dec. 23, 1994; 64 FR 6252, Feb. 9, 1999]

#### § 303.102 Collection of overdue support by State income tax refund offset.

(a) *Overdue support qualifying for offset.* Overdue support qualifies for State income tax refund offset if: