DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 303

RIN 0970–AB72

Child Support Enforcement Program; Grants to States for Access and Visitation Programs: Monitoring, Evaluation, and Reporting

AGENCY: Office of Child Support Enforcement (OCSE), Administration for Children and Families, HHS.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This proposed rule implements provisions contained in section 391 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and establishes the requirements for State monitoring, reporting and evaluation of Grants to States for Access and Visitation Programs. Access and visitation programs support and facilitate noncustodial parents' access to and visitation of their children by means of activities including mediation (both voluntary and mandatory), counseling, education, development of parenting plans, visitation enforcement (including monitoring, supervision and neutral drop-off and pickup) and development of guidelines for visitation and alternative custody arrangements.

DATES: Consideration will be given to written comments received by June 1, 1998.

ADDRESSES: Comments should be submitted in writing to the Office of Child Support Enforcement, Department of Health and Human Services, 370 L'Enfant Promenade, SW, Washington, DC 20447. Attention: Director of Automation and Special Projects Division. You also may submit comments by sending electronic mail (e-mail) to ''darnaudo@acf.dhhs.gov'', or by telefaxing them to (202) 401–5539. This is not a toll-free number. Comments will be available for public inspection Monday through Friday, 8:30 a.m. to 5:00 p.m. on the 4th floor of the Department's office at the above address.

FOR FURTHER INFORMATION CONTACT: David Arnaudo, OCSE, Division of Automation and Special Projects, (202) 401–5364.

Statutory Authority

The proposed regulations are published under the authority of section 469B of the Social Security Act (the Act), as amended by section 391 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193) and Section 1102 of the Social Security Act. Section 469B(e)(3) requires that each State to which a grant is made shall monitor, evaluate, and report on such programs in accordance with regulations prescribed by the Secretary.

Background

Child support enforcement and access and visitation programs are linked in several important ways. Studies conducted by the U.S. Census Bureau and others have found that: (1) Non-custodial parents with joint custody and visitation rights pay child support at a much higher rate than those without such rights, (2) parental visitation is highly associated with child support compliance, (3) child support payment erodes over time as non-custodial parental involvement lapses, (4) one reason cited for non-payment of child support for those with incomes is that the custodial parent does not permit the non-custodial parent to see the child(ren), (5) lack of non-custodial parent control of child raising and the divorce process is a primary reason for non-payment of child support where such parents are employed, (6) non-custodial parents who pay child support feel empowered to seek post-divorce or post-split involvement with their children, (7) unwed nonresident fathers who established paternity have legally standing to seek visitation and custody, (8) nonresident mothers and fathers have asked that visitation and custody be established and enforced like child support is established and enforced, (9) involvement by nonresident parents is desirable for the well being of the child. Finally, paternity establishment and divorce proceedings are often the gateway to establishing both child support and access and visitation rights. The first Federal legislation to connect access and visitation rights on a formal basis with child support was contained in the Child Support Enforcement Amendments of 1984 (Pub. L. 98–378) at Section 23. This act set forth that it was the sense of Congress that—

> ''State and local governments must focus on the vital issues of child support, child custody, visitation rights, and other related domestic issues that are properly within the jurisdiction of such governments * * *''

Later the Family Support Act of 1988 (Pub. L. 100–485) authorized up to $4 million each year for fiscal years 1990 and 1991 for State demonstration projects to develop, improve, or expand activities designed to increase child access provisions of court orders. The legislation required an evaluation of these projects and a Report to Congress on the findings. On October 10, 1996, the Department of Health and Human Services transmitted to Congress the report entitled, ''Evaluation of the Child Access Demonstration Projects''. The report indicated that requiring both parents to attend mediation sessions and developing parenting plans was successful for cases without extensive long term problems.

In September, 1996, the U.S. Commission on Child and Family Welfare submitted a report to the President and Congress which strongly endorsed additional emphases at all government levels, especially State and local levels, to ensure that each child from a divorced or unwed family have a parenting plan which encourages and enables both parents to stay emotionally involved with the child(ren).

Finally, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) added a new provision at section 391 to award funds annually to States to establish and administer programs to support and facilitate noncustodial parents' (fathers or mothers) access to, and visitation of, their children through activities including mediation (both voluntary and mandatory), counseling, education, development of parenting plans, visitation enforcement (including monitoring, supervision, neutral drop-off and pickup), development of guidelines for visitation and alternative custody arrangements. Under the new provision, States may administer programs directly or through contracts or grants with courts, local public agencies, or nonprofit private entities; States are not required to operate such programs on a statewide basis.

Under this provision, the amount of the grant to be made to the State shall be the lesser of 90 percent of State expenditures during the fiscal year for activities just described or the allotment to the State for the fiscal year. The allotment would be determined as follows: an amount which bears the same ratio to $10,000,000 for grants as the number of children in the State living with only 1 biological parent bears to the total number of such children in all States. Such allotments are to be adjusted so that no State is allotted less than $50,000 for fiscal years 1997 and 1998 or $100,000 for any succeeding fiscal year. These funds may not be used to supplant expenditures by the State for authorized activities; but, States shall use the grant to supplement such expenditures at the level equal to the level of such expenditures for fiscal year 1995.

There are a number of child access programs operating in the country. Most of these programs offer assistance to both non-custodial fathers and mothers and are gender neutral. The National Center for State Courts estimates that there are currently about 205 programs offering court-based or court-annexed services for divorce disputes. A roster compiled by the Fathers for Equal Rights Inc. of Des Moines, Iowa, identifies 282 parent's rights organizations throughout the United States. These groups offer one-on-one counseling and peer group motivation as well as other relevant advice to assist non-custodial parents to stay involved with their children. Similar programs are operating in cities across the country motivating and counseling parents on a one-to-one basis to stay involved or become involved with their children.

The Parents Fair Share Demonstrations, funded in part by the Administration for Children and Families (ACF), in Kent County, Michigan; Montgomery County, Ohio; Mercer County, New Jersey; Shelby County, Tennessee; Hampden County, Massachusetts; DuVal County, Florida; and Los Angeles County, California, are motivating and enabling fathers to become involved with their children largely through peer group sessions and employment and other social assistance. Other responsible fatherhood demonstration projects, which also address access, visitation and fatherhood involvement issues, have recently been funded by the Office of Child Support Enforcement in California, New Hampshire, Maryland, Colorado, Massachusetts, Wisconsin, Oregon, Missouri, and Washington.

States are at different positions with respect to access and visitation programs. Some States have well developed programs at least for divorced or separated parents; States such as Michigan, California, Massachusetts, Connecticut, Colorado, and Missouri have State programs. Some States have only local programs. Other States are just beginning to talk to practitioners and advocates regarding programs they may want to pursue.

In September 1997, the Office of Child Support Enforcement awarded 54 States and independent jurisdictions access and visitation Grants covering all the activities mentioned in the Act.

Regulatory Philosophy

Historically in the Child Support Enforcement Program, the Federal government specified in detailed regulations how things must be done by States. The Federal Office of Child Support Enforcement (OCSE) has entered an era which necessitates a new philosophy with respect to Federal mandates through regulation. The President is committed to reducing the burden on States and streamlining regulations. OCSE's new watchwords are partnership, results, flexibility, and accountability.

PRWORA provides significant flexibility in terms of access and visitation. The Act allows States, local and non-profit entities, courts, or local public agencies to administer the program, and only requires regulations for the specific functions of monitoring, evaluation and reporting.

Given the funding limitations, we attempted to strike a balance between provision of access and visitation services and the need to gather data to enable States to evaluate and report on their programs. We particularly invite public comment on what the relationship should be between the monitoring, evaluation, and reporting requirements in this regulation.

In developing these rules we elicited input from the National Governors' Association, the American Public Welfare Association, the National Conference of State Legislatures, and the National Association of Counties. We also held a nationwide teleconference with father's and children's rights groups, groups of local public agencies representing minority responsible fatherhood programs, and groups representing concern for women's issues.

A meeting was held with the States' access and visitation contacts or their staff at which 36 States were represented. At this one-day meeting, discussions were held on the need to require a minimum set (or core) of data which would be uniformly collected. All meeting participants were called upon to suggest data elements and approaches, and many suggestions were received.

Description of Regulatory Provisions

Paragraph 303.109(a) would require States to monitor all access and visitation programs to ensure that services funded under these programs are: (1) Authorized under section 469B(a) of the Act and (2) efficiently and effectively provided while complying with reporting and evaluation requirements, as set forth in paragraphs 303.109(b) and 303.109(c).

Paragraph 303.109(b) would allow State programs funded by section 469B of the act to be evaluated using data gathered to measure the effectiveness of program operations. States would also be required to assist in the evaluation of programs deemed significant or promising by the Department, as directed by program memorandum.

Paragraph 303.109(c) would require that States provide a detailed description of each funded program by including such information as: service providers and administrators, service area, population served, program goals, application or referral process, referral agencies, nature of the program, activities provided, and length and features of a 'completed' program. We also would require, with regard to programs which provide services: the number of applicants or referrals for each program, the number of program participants in the aggregate and by eligible activity, and the total number of graduates in the aggregate and by eligible activities (*e.g.*, mediation, education etc.). This information is proposed in order to assess: (1) The demand for the program and effectiveness of outreach and ability of the program to meet demand, (2) the service population served and scope and size of the program, and (3) whether such recipients are completing standard program requirements.

Paragraph 303.109(c)(3) would require States to report information specified in paragraphs 303.109(c)(1) and (c)(2) annually, collected at a date and in a form as the Secretary may prescribe in program instructions from time to time.

Regulatory Procedures

Paperwork Reduction Act

The proposed section 303.109 contains an information collection requirement. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507 (d)), the Administration for Children and Families has submitted a copy of this section to the Office of Management and Budget (OMB) for its review.

- *Title:* Grants to States for Access and Visitation Programs—Program Description and Participation Data.
- This program description and participation data are being collected so that we may report activities funded to the Congress in the Child Support Annual Report and so that the Federal Government and States can assess program progress. Information to be collected includes: Program descriptions, number of applicants/referrals, number of total participants, number of participants and graduates by the aggregate and by activity.
- *Likely respondents include:* States and independent jurisdictions reporting data from their own projects or data from grantees/contractees—non-profit entities, local public agencies and/or courts.

• *Number of likely respondents:* 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, and Guam will respond. An average of 3 sub-jurisdictions will be anticipated to respond as components of State/jurisdiction efforts.

• *Proposed frequency of response:* annually.

• *Average Burden Per Response:* 24 hours.

• *Estimate of the total annual reporting and record keeping burden:* (54 States and jurisdictions + 3 sub-jurisdictions or 216 responding units) x (1 response per year) x (24 hours average burden per response) = 5,184 hours.

The Administration for Children and Families will consider comments by the public on this proposed collection of information in—

• Evaluating whether the proposed data collection is necessary for proper performance of the functions of ACF, including whether the information will have practical utility.

• Evaluating the accuracy of the ACF's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

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

• Minimizing the burden of the collection of information of those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technology, e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after the publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations. Written comments to OMB for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington D.C. 20503, Attn: Ms. Wendy Taylor.

Executive Order 12866

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that the rule is consistent with these priorities and principles. The proposed rule implements statutory provisions that require States that receive grants for child access and visitation programs to monitor, evaluate, and report on such programs in accordance with regulations prescribed by the Secretary.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

The Department has determined that this proposed rule would not impose a mandate that will result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of more than $100 million in any one year. The Department has determined that this proposed rule is not a significant regulatory action with in the meaning of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this proposed regulation would not result in a significant impact on a substantial number of small entities. The primary impact of the proposed rule would be on State governments which are not considered small entities under this Act.

List of Subjects in 45 CFR Part 303

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

(Catalog of Federal Domestic Assistance Programs No. 93.597, Grants to States for Access and Visitation)

Dated: March 13, 1998.

Olivia A. Golden,

Assistant Secretary for Children and Families.

For reasons stated in the preamble, we propose to amend 45 CFR part 303 as follows:

PART 303—STANDARDS FOR PROGRAM OPERATIONS

1. The authority citation of part 303 continues to read as follows:

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

2. A new § 303.109 is added to read as follows:

§ 303.109 Procedures for State monitoring, evaluation and reporting on programs funded by Grants to States for Access and Visitation Programs.

(a) *Monitoring.* The State must monitor all programs funded under Grants to States for Access and Visitation Programs to ensure that the programs are providing services authorized in section 469B(a) of the Act, are being conducted in an effective and efficient manner, and are complying with Federal evaluation and reporting requirements.

(b) *Evaluation.* The State:

(1) May evaluate all programs funded under Grants to States for Access and Visitation Programs;

(2) Must assist in the evaluation of significant or promising projects as determined by the Secretary.

(c) *Reporting.* The State must:

(1) Report a detailed description of each program funded by providing the following information, as appropriate: service providers and administrators, service area (rural/urban), population served (race/marital status), program goals, application or referral process (including referral sources), voluntary or mandatory nature of the programs, types of activities, and length and features of a complete program;

(2) Report data including: The number of applicants/referrals for each program, the number of total program participants families and individuals, and the number of program participants and program graduates (families and individuals) by authorized activities (mediation—voluntary and mandatory, counseling, education, development of parenting plans, visitation enforcement—including monitoring, supervision and neutral drop-off and pickup, and development of guidelines for visitation and alternative custody arrangement);

(3) Report the information as required in paragraphs (c)(1) and (c)(2) of this section annually, at such time and in such form as the Secretary may require from time to time.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[MM Docket No. 98–35; FCC: 98–37]

Broadcast Services; Radio Stations, Television Stations

AGENCY: Federal Communications Commission.